PROCEEDINGS

OF THE

LEGISLATIVE COUNCIL OF INDIA,

FOR

January to December 1859.

VOL. V.

Published by the authority of the Council.

CALCUTTA:

C. H. MANUEL, CALCUTTA PRINTING AND PUBLISHING COMPANY (LIMITED),
NO. 1, WESTON'S LANE, COSSITOLLAH.

1859.

LIBRARY
284B

1 V.
3444

X.IV/344

ERRATA.

Column 288, last line. For "*Hackery*" read "*Hackney*."
" 807, line 13. For "*commission*" read "*communication*."
" 828, line 25. For "*tend*" read "*lead*."
" 851, line 13 from the bottom. For "*give*" read "*gave*."

SECRETARY'S LIBRARY

PROCEEDINGS

OF THE

LEGISLATIVE COUNCIL OF INDIA.

Saturday, January 8, 1859.

PRESENT:

The Hon'ble the Chief Justice, *Vice-President*, in the Chair.

Hon. J. P. Grant,	P. W. LeGeyt, Esq.,
Hon. Lieut.-Gen. Sir J. Outram,	E. Currie, Esq.,
Hon. H. Ricketts,	H. B. Harington, Esq., and
Hon. B. Peacock,	H. Forbes, Esq.

STAMP DUTIES (BENGAL).

THE VICE-PRESIDENT read a message, informing the Legislative Council that the Governor-General had assented to the Bill "to amend Regulation X. 1829 of the Bengal Code (for the collection of Stamp Duties)."

CIVIL PROCEDURE.

THE CLERK reported to the Council that he had received a communication from the Home Department, forwarding for consideration, in connection with the Civil Procedure Code, an extract of a Despatch from the Secretary of State for India, regarding attachments on public Treasuries in execution of decrees passed against Collectors.

MR. PEACOCK moved that the above communication be printed.

Agreed to.

RECOVERY OF RENTS (BENGAL).

THE CLERK also reported that he had received from the Home Department an extract of a Despatch from the Court of Directors, together with a copy of a letter from the Bengal Government, respecting the proposed repeal of Section X Regulation XIX, 1793 of the Bengal Code, which empowers Zemindars, without previous application to a Court of Judicature, and without notice to any Officer of Government, to dispossess Lakhirajdars from grants made after the 1st of December 1790.

MR. CURRIE said, there was a Section in the Bill "to amend the law relating to the recovery of Rent in the Presidency of Fort William in Bengal," in which it was proposed to amend the Section referred to; he therefore begged to move that the communication be referred to the Select Committee on that Bill.

Agreed to.

OATHS AND AFFIRMATIONS.

THE CLERK also reported that he had received a communication from the Secretary to the Chief Commissioner of the Punjab, regarding the Bill "concerning Oaths and Affirmations."

MR. FORBES moved that the above communication be printed.

Agreed to.

PRESCRIPTION AND LIMITATION.

MR. HARINGTON presented the Report of the Select Committee on the Bill "to provide for the acquirement and extinction of rights by Prescription, and for the Limitation of Suits."

FRAUDULENT TRANSFERS AND SECRET TRUSTS.

MR. LEGEYT said that Sir Arthur Buller, whom all must regret not seeing in his usual place in the Council, which he had so long and ably filled, had placed in his hands a Bill "for the prevention of Fraudulent Transfers of Property and of Secret Trusts."

It was much to be regretted that the pressing duties of the Honorable and learned Member had prevented him from bringing the Bill before the Council himself, as it must necessarily lose in his (Mr. LeGeyt's) hands that weight which he would have given it on its introduction.

Sir Arthur had transmitted to him a Statement of the objects and reasons of the Bill, which he felt, to do it justice, must be read.

Sir Arthur observed as follows :—

"I fear that many persons will think that the title of this Bill promises a rather Quixotic enterprise: and I am free to admit that the soil of this country is so charged with fraud, that, even if we succeed in preventing its escape at one place, the chances are great that it will find its way out at some other.

"I still however dare to hope that some good may be done by the provisions which I propose to enact, and that, though they may not have the success of a Statute of Frauds in England, they will even here render the perpetration of frauds more troublesome, more dangerous, and therefore, possibly, more rare.

"The Council is aware that, except in the Presidency Towns, and even there as regards Hindoos and Mahomedans, real property may be alienated, and all sorts of property be willed away by word of mouth; that a verbal authority to a wife to adopt a son is sufficient; and that no writing is required to evidence any contract.

"The result of this system naturally is, that persons are daily sworn to have given or willed away property when they never did so, to have authorized adoptions which they never did authorize, and to have entered into contracts of which in truth they never dreamed.

"The remedy I propose is the simple and well known one of requiring all these transactions to be evidenced by writing.

"The first Section provides that no transfer of any interest in immoveable property shall be valid, and the second that no agreement for any such transfer shall be enforced, unless they shall be in writing. I have purposely left these provisions quite general, but I dare say that, if the Bill has the fortune to find its way to a Committee, exceptions may with propriety be there introduced. I confess that I am myself not without my fears that the necessity of a resort to writing in all the petty transactions of the poor, for instance, in their short leases or in their arrangements with Mahajuns, may be more likely to facilitate than to defeat fraud. The poor lessee or borrower cannot read the writing by which he is to be bound, whereas the opposite party can; and though of course there will always be somebody to swear that the writing was duly explained to the poor man, I fear that in many instances he will be made to sign something very different from what he intended, and that, having done so, it will be extremely difficult for him to do away with the effect of his own signature.

"I am in hopes that before long the genuineness of such transfers will be further assured by that most effectual of all securities—immediate, compulsory, and notorious registration, a Bill for which is, I believe, likely very soon to make its appearance under the auspices of the Honorable Member for Madras.

"Then follow provisions requiring that no testamentary dispositions of any kind, and no revocations or alterations of such instruments, and no authority to adopt, shall be valid unless reduced to writing and duly signed and attested.

"The 9th Clause, which is taken almost verbatim from the Statute of Frauds, provides that no contract for the sale of immoveable property of the value of one hundred Rupees or upwards, shall be enforced unless evidenced by some writing or memorandum with the usual exceptions.

"The remaining and the more novel provisions of this Bill are directed to the discouragement of the mischievous practice of Benamee transfers of land. To gentlemen so conversant as the Members of this Council with the nature and the evils of this system, there is no necessity for any preliminary explanation. We all know that there is hardly a Native family of note, which has not at one time or another suffered severely from the treachery to which Benameeism opens the door; and that there is no counting the number of unlucky creditors who have to thank it for having been for years kept out of their just rights or altogether defrauded; and perhaps the most mischievous result of the practice is, that, even where it is originally resorted to in the purest innocence, it is almost as likely to lead to injustice as where it is all along employed for the purposes of deliberate fraud. It is with this former class of cases that we have the greatest difficulty to deal. No one would hesitate to deter by severe penalties fraudulent attempts to conceal property from creditors; and no one would wish to assist a land-holder in evading the legitimate responsibilities attached to the ownership of land. If those responsibilities are unfairly onerous at present, let them be removed or modified. If they might as well be performed by substitutes, let the law say so. But whatever sound policy requires, let us declare clearly and insist upon; for the reproach to us is equally great if we permit resort to Benameeism either as a protection against an oppressive law or as a means of evading a just one. But it is a natural enough question to ask, why may not a father buy property in the name of his son, intending that son eventually to succeed to it after his death, and trusting to him in the mean time to allow him the enjoyment of the rents? Or, what more harmless than that a Native Gentleman of exalted rank who fears the trouble, or, as he may perhaps consider it, the disgrace of personally enforcing his rights at law, or that a numerous joint family for convenience sake should make their purchases in the name of a trusted manager? Or again, why may not a purchase, intended for the benefit of

many brothers, be made in the name of the eldest or of the one who was born under the luckiest star? Assuredly no one would wish wantonly to interfere with the freest exercise of rights such as these. But just see to what mischiefs their exercise, although perfectly innocent in its inception, so often leads. The son and the manager, and the brother of the lucky star, although they never dreamed of fraud at the time they accepted the transfer in their name, as years roll and necessities press hard, or sudden temptations allure, are unable to resist the opportunities of fraud which these Benamee arrangements afford, and boldly assert that the purchase was clothed with no trust, but was made *bonâ fide* with their own money and for their own use. Surrounding circumstances naturally enough fit into the ostensible transaction, and its true character becomes most difficult of proof.

"The too common result, therefore, is the success of the fraud and the ruin of many simple people; and I really think I am very slightly exaggerating when I say that I hardly recollect any great Native equity suit in our Supreme Court in which Benamee transactions have not played a conspicuous part, and been taken advantage of for some fraudulent purpose.

"Well then! in this state of things we must weigh the mischief of tolerating such a system against the hardship of prohibiting it; for I see no middle course by which we can permit its harmless use, and at the same time, secure ourselves against its abuse; and I confess that in my belief the aggregated hardships of a hundred cases of interference with mere convenience or with fancies, will not be equal to the hardships of a single case of successful fraud. Accordingly this Bill proposes to declare the Benamee system a *malum prohibitum*, and the mode of prohibition by which it hopes to discourage it is by repudiating altogether all secret trusts, and leaving the Benamee dealer entirely at the mercy of the person whose name he chooses to use.

"In this view the third Clause proposes to enact—

"'Whenever any interest in immoveable property is transferred to any person by any written instrument, and no declaration of trust in relation thereto shall be expressed in the body of the same instrument, or in some memorandum endorsed or written thereon at the time of the execution thereof, such person, and every other person claiming under him, shall be entitled to hold and absolutely dispose of such interest for his own use and benefit free from all trust—as against the party transferring the same—and against every person (capable of entering into a lawful contract) who shall claim that the property, though transferred to the name of another, was by agreement purchased in reality for his use and benefit—and as against every person claiming under such party or person: saving nevertheless to every person who shall prove that he was at the time of the transfer and continues to be a *bonâ fide* creditor of the transferrer or of any person for whose use and benefit the transfer was really intended, every such right and remedy whether by suit or otherwise as he would have had if this Act had not been passed: and saving also all such right, title, and interest in the property transferred of any other person other than the transferrer or person for whose use and benefit the transfer was really intended or persons claiming under them as he would have had if this Act had not been passed.'

"I cannot help thinking that, when it becomes generally known that this forfeiture, as it were, may at any time be the consequence of a Benamee transaction, and that, however great the baseness of the transferree, no wilful actor in the transaction will have any remedy against him—I cannot help thinking, I say, that the risk will be considered too great for many to incur it, merely for the sake of indulging their confidence in managers or their partiality for lucky stars.

"The forfeiture, however, it is to be borne in mind, in no-way affects the rights of others. The offending party himself is liable to lose for ever the right he transfers or causes to be transferred to another; but all rights which the law for the time being gives to creditors over the property transferred, or to other persons not claiming under the offender, are expressly saved.

"But I think we should not stop here, and leave the transferree in the inviting position of having every thing to gain and nothing to lose by the use of his name.

"I fear that the temptation of so easy an acquisition of property would be so great to managers and influential relations and friends, that they would devise every stratagem to induce their simple protegés to resort to Benamee transactions, and, by contriving to keep up the appearance of being equally ignorant and unconcerned themselves, evade the chance of having their fraud brought home.

"The fourth Section of this Bill has, therefore, been introduced to show the transferree that his participation in the transaction is not to be pure gain, for it provides that he shall be liable to a fine, which may amount to one-half more than the value of the interest transferred.

"I feel somewhat confident that this double penalty, by which the party originating the Benamee manœuvre forfeits all right to recover again what he allows ostensibly to pass to others, and by which the transferree loses so much more than he gains, will be sufficient to deter parties from engaging with their eyes open in any such transactions. And where the transaction is fraudulent in its inception, I apprehend that few persons will object to the additional penalty which is provided by the fifth Section, namely, imprisonment with or without hard labor, which may extend to two years. This Section I have taken from the proposed new Penal Code, and it may possibly be that the Council may hereafter think proper to omit it in this Bill, and to leave the offence to be provided for in the Code. My object will be sufficiently gained if it becomes notorious by the publication of this Bill and of the discussions upon it that such a penalty is in store.

"These, then, are the provisions by which this Bill, relying always, be it borne in mind, upon the contemporaneous assistance of a Registration Act, attempts the prevention of fraudulent transfers and of secret trusts.

"Short and simple as they appear to be, I can assure the Council that I have turned and twisted them into an infinite variety of shapes before bringing them to that in which I now venture to present them; and the experience of the many oversights which I have made in the course of my labors does not much encourage the hope that many do not still remain. I have received many valuable suggestions from many well-informed persons—from none more so than from the Clerk of this Council, for whose assistance on this, as on many a previous occasion, I am much indebted, and readily avail myself of this opportunity to tender my thanks.

"I have no doubt that it will be made apparent hereafter that the Bill goes too far in this particular and not far enough in that, and that it will be greatly improved in its passage through the Council: but I confidently hope that there will be no difference of opinion as to the wholesomeness of the principle of the Bill, and that it will at all events be admitted to a second reading."

He (Mr. LeGeyt) having performed his task, begged leave to move the first reading of the Bill.

The Bill was read a first time.

CANTONMENT JOINT MAGISTRATES.

MR. HARINGTON moved that the Bill "for conferring Civil Jurisdiction in certain cases upon Cantonment Joint Magistrates, and for constituting those Officers Registers of Deeds" be read a third time and passed.

The motion was carried, and the Bill read a third time.

MERCHANT SEAMEN.

On the Order of the Day being read for the third reading of the Bill "for the amendment of the law relating to Merchant Seamen"—

MR. CURRIE said that, before moving the third reading, he would propose that the Bill be recommitted, to enable him to make an amendment which he had proposed when the Bill passed through Committee, but which had then been postponed.

Agreed to.

MR. CURRIE said, the Section which he proposed to amend was No. XXXI, the third Clause of which provided as follows:—

"The Master of every Foreign-going ship shall, before going to sea, produce the certificate so to be given to him by the Shipping Master as aforesaid to the Collector of Customs, and no Officer of Customs shall clear any such ship outwards without such production."

The alteration which he had proposed, in accordance with a suggestion of the Governor of the Straits, was that, where there was no Collector of Customs, the Officer authorized to grant Port-clearance should be substituted. Some Honorable Members expressed a doubt whether Port-clearances were given in the Ports of the Straits Settlement, and he had undertaken to make enquiries. He had, consequently, written to the Superintendent of Marine, from whom he had received a reply to the effect that all vessels which discharged or took in cargo at Singapore received a Port-clearance signed by the Master Attendant.

He (Mr. Currie) would therefore move that the word "and" in the 33rd line be omitted, and that the following words be substituted for it—

"or if there be no Collector of Customs, to the Officer whose duty it is to grant a Port-clearance."

The remainder of the Clause would then stand as a separate sentence.

Agreed to.

MR. CURRIE moved that the words "or other Officer" be added in lines 34 and 48.

The motions were severally carried, and the Section, as amended, was then passed.

A like amendment was made in the 35th line of Section XXXII.

The Council having resumed its sitting, the Bill was reported.

MR. CURRIE moved that the Bill be read a third time and passed.

The motion was carried, and the Bill read a third time.

CANTONMENT JOINT MAGISTRATES.

MR. HARINGTON moved that Mr. Ricketts be requested to take the Bill "for conferring Civil Jurisdiction in certain cases upon Cantonment Joint Ma-

gistrates, and for constituting those Officers Registers of Deeds" to the President in Council, in order that it might be submitted to the Governor-General for his assent.

Agreed to.

MERCHANT SEAMEN.

MR. CURRIE moved that Mr. Ricketts be requested to take the Bill "for the amendment of the law relating to Merchant Seamen" to the President in Council, in order that it might be submitted to the Governor-General for his assent.

Agreed to.

PENAL CODE.

MR. LEGEYT moved that a communication received by him from the Bombay Government, forwarding an extract of a Despatch from the Court of Directors, relative to the expediency of enacting a severer punishment than that prescribed by the Penal Code for the offence of attempting to create a panic, be laid upon the table, and referred to the Select Committee on "The Indian Penal Code."

Agreed to.

BREACHES OF CONTRACT.

MR. FORBES moved that a communication received by him from the Madras Government be laid upon the table and referred to the Select Committee on the Bill "to provide for the punishment of Breaches of Contract by Artificers, Workmen, and Laborers, in certain cases."

Agreed to.

RECOVERY OF RENTS (BENGAL).

MR. CURRIE moved that Mr. Ricketts be added to the Select Committee on the Bill "to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal."

Agreed to.

The Council adjourned.

Saturday, January 15, 1859.

PRESENT:

The Hon'ble the Chief Justice, *Vice-President.*

Hon. B. Peacock,	H. B. Harington, Esq.,
P. W. LeGeyt, Esq.,	and
Edward Currie, Esq.,	H. Forbes, Esq.

THE Members assembled at this Meeting did not form the quorum required by Law for a Meeting of the Council for the purpose of making Laws.

Saturday, January 22, 1859.

PRESENT:

The Hon'ble the Chief Justice, *Vice-President,* in the Chair.

Hon. J. P. Grant,	P. W. LeGeyt, Esq.,
Hon. Lieut.-Gen. Sir	E. Currie, Esq.,
J. Outram,	H. B. Harington, Esq.,
Hon. H. Ricketts,	and
Hon. B. Peacock,	H. Forbes, Esq.

CIVIL PROCEDURE.

THE CLERK presented a petition from the Indigo Planters' Association, concerning the Bill "for simplifying the Procedure of the Courts of Civil Judicature not established by Royal Charter."

MR. PEACOCK moved that the above petition be printed.

Agreed to.

PRESCRIPTION AND LIMITATION.

THE CLERK presented a petition from under-tenants of Burdwan, praying that twelve years be prescribed as the period of limitation for the institution of suits for the enhancement of rent.

Also a petition of landholders of Bengal against the 11th Clause of Section XVI of the Bill "to provide for the acquirement and extinction of rights by prescription and for the limitation of suits," which proposed a limitation of twelve years for suits to enhance the rent of land held at a certain rent without a written engagement.

MR. HARINGTON moved that the above petition be read.

Agreed to.

The petition was read accordingly.

THE VICE-PRESIDENT thought it would be desirable to defer the consideration of the Clause to which this petition related, if the Council should get so far on with the Bill, until the petition was printed and circulated. It seemed to him, however, to be founded on an ignorance or forgetfulness of the present state of the law, as established by certain decisions of the Court of Sudder Dewanny Adawlut, in suits for the enhancement of rent. There were, if he recollected aright, some earlier decisions, to the effect that the right to enhance rent was not subject to the ordinary law of limitation. But, when he first drew this Bill, his attention had been called to at least one later decision in which the contrary was held, and which involved some of the consequences to the land-owners alluded to in the petition. He had, therefore, framed this Clause, which, if it subjected such suits to a law of limitation, provided a protection far cheaper and more convenient than that contemplated by the petition, of bringing a suit to enhance every twelve years, namely, that of taking a kubooleut or written engagement from the ryot. It was quite necessary for the Legislature to deal with this question. Either it must adopt a Clause guarded and restricted as his was; or it must, in the Rent Bill of the Honorable Member for Bengal, declare that the right of the landlord to bring a suit to enhance was subject to no limitation. If it passed the question over *sub silentio*, Courts of Justice might treat, as they had already done, such suits as subject to the general law of limitation, and in that case might, in the construction of this Act, apply to them even a six years' limitation.

SIR JAMSETJEE JEJEEBHOY'S ESTATE.

THE CLERK reported to the Council that he had received a communication from the Home Department, forwarding a copy of a Despatch from the Secretary of State for India, returning for revision the Bill "for settling a sum of money and a mansion-house and hereditaments called Mazagon Castle, in the Island of Bombay, the property of Sir Jamsetjee Jejeebhoy, Baronet, so as to accompany and support the title and dignity of a Baronet lately conferred on him by Her present Majesty Queen Victoria, and for other purposes connected therewith."

MR. LEGEYT moved that the above communication be printed.

Agreed to.

CANTONMENT JOINT MAGISTRATES.

THE CLERK reported that he had received a communication from the Secretary to the Government of the North-Western Provinces, forwarding a copy of a letter from Major Williams, the Superintendent of Cantonment Police, proposing that a provision for allowing an appeal to the Sessions Court be introduced in the Bill "for conferring Civil Jurisdiction in certain cases upon Cantonment Joint Magistrates, and for constituting those Officers Registers of Deeds."

MR. HARINGTON said, the Bill to which this communication related having been read a third time at the last Meeting of the Council, and ordered to be submitted for the assent of the Right Honorable the Governor-General, he apprehended that it now rested with His Lordship to determine whether he would give his assent to the Bill in its present form, or refer it back to the Council for the consideration of any particular point, and that, consequently, there could be no action upon the communication which had been just read to the Council beyond directing that it be laid upon the table, and he accordingly begged to make a motion to that effect. At the same time, he must remark that Major Williams, the Superintendent of Cantonment Police in the North-Western Provinces, who now proposed that all decisions passed under the Bill should be open to appeal, however simple might be the character of the suit, or however trifling the amount or value in dispute, had made no such proposition when the Bill, after being read a second time, was published for general information, but had confined himself to recommending that some provision should be introduced into the Bill to prevent false complaints or suits, and to punish them when made, which had been done. The only reason assigned by Major Williams for his present pro-

position was, that an appeal would be useful as a check in preventing irregularities. Now he need not tell the Council that, although, under the existing system, an appeal lay from every decision of a Civil Court in a regular suit, an Act was passed in the year 1854, which declared that "whereas every "case in appeal ought to be determined "upon the merits, without regard to "technical errors or defects, no order or "decision of any of the Civil Courts "of the East India Company shall be "reversed, altered, or remanded on ac-"count of any error, defect, or irregu-"larity not productive of injury to "either party," and a similar provision had been introduced into the proposed new Code of Civil Procedure under the head of Appeals. If this rule was just and proper as regarded the Civil Courts, and he (Mr. Harington) apprehended that no one would deny that it was so, it appeared to him that, *à fortiori*, the principle of the rule should be extended to the decisions which would be passed by Cantonment Joint Magistrates under the Bill introduced by him. It was scarcely necessary for him to say that the suits which would be instituted under the Bill would generally be of the simplest character and of a very small amount, and he did not think that it would be expedient to give an appeal in them solely for the purpose of maintaining regularity of proceeding. In the letter from the Secretary to the Government of the North-Western Provinces, it was stated as an additional reason for allowing an appeal in cases coming under the Bill, that the Government would not be able always to find Officers thoroughly fit for the office of Cantonment Magistrates. Now, allowing that such might occasionally be the case, he would observe that the Bill did not constitute every Cantonment Joint Magistrate *ex-officio* a Civil Judge. On the contrary, it left it to the Government to determine what Officers should be invested with the Civil jurisdiction mentioned in the Bill, and when an Officer might be appointed to a Cantonment Joint Magistracy, who, in the opinion of the Government, was not competent to exercise that jurisdiction, he (Mr. Harington) supposed that it would not be given to him, and that the Civil suits arising within the limits of the Cantonment, to which such Officer might stand appointed, would be left to be decided under the existing law. At the same time, looking to the large Criminal powers which were now exercised by Cantonment Joint Magistrates, and to the fact that the decisions of those Officers in the great majority of the cases disposed of by them as Criminal Judges were not open to appeal, he (Mr. Harington) could scarcely believe that any Officer would be selected for the situation of Cantonment Joint Magistrate who would not be found fully competent to discharge, without the check of an appeal, the Civil duties which might be entrusted to him under this Bill.

The motion, that the communication received from the Secretary to the Government of the North-Western Provinces should be laid upon the table, was then put and agreed to.

MERCHANT SHIPPING ACT.

THE CLERK reported that he had received from the Home Department, for consideration in connection with the Indian Merchant Shipping Bill, a copy of papers respecting a proposed adaptation of the Sections 214 to 220 (Volunteering into the Navy) of the English "Merchant Shipping Act 1854," to enable seamen to volunteer into the Indian Navy.

MR. CURRIE observed that this communication was also too late, as the Bill had been read a third time and passed. It was not, however, a matter of much consequence, as he believed that the Council could not deal with the question, which was that of placing volunteering for the Indian Navy on the same footing with volunteering for the Royal Navy. He (Mr. Currie) apprehended that such an enactment would be opposed to the provisions of the English Act, and therefore beyond the powers of the Council.

The Merchant Shipping Act gave the Master of a merchant vessel, in all parts of Her Majesty's dominions, a remedy in cases of desertion, except only when the deserter volunteered into the Royal Navy. Now, if we extended that exception to the ships of the Indian Navy, we should deprive the Master, in a certain class of cases, of the remedy

came the proviso—"provided that if any other title to such property be proved, such possession shall have been adverse thereto." He had looked into the dictionary for the meaning of the words "adverse possession," but he derived no help as to its meaning from that source, neither could he gain any elucidation from Clause VII, which professed to define when possession was to be deemed adverse; he had also referred to the Law Book he held in his hand, and in page 423 he found that "an adverse possession is a possession acquired by "disseisin;" again, in page 476, he learnt that "adverse possession" was "an occupation with intent to claim against the true owner."

Now all this did not help him a bit. He found himself very much where he was. He supposed that, if the possession had been permissive, if the horse had been retained with his permission and approval, then the title would not be complete, but the meaning was not at all clear to him, and the remark would apply to other Sections of the Bill. The opinions of the Governments of the other Presidencies were very generally the same as his own. The Secretary of the North-Western Provinces wrote as follows:—

"Although the Lieutenant-Governor is very reluctant to press a suggestion which must impose the trouble of re-casting the whole frame and expression of the present Bill, he yet cannot but acquiesce in the force of the objections unanimously taken to it by the judicial authorities in these Provinces; that, as it now stands, it is, in many parts, drawn in a long and involved phraseology, intelligible, no doubt, without difficulty, to practitioners in English Courts, but sure to cause serious perplexity, and much inconsistency and misconstruction, on the part both of the Native Judges and of parties interested in the application of its provisions."

He laid stress upon the necessity of making the language as plain as possible. The Madras Government wrote:—

"You will observe that the Judges of the Sudder Adawlut are of opinion that the proposed Act is cumbrous, and drawn in technical language ill suited to the comprehension of the tribunals and people of this Presidency; and that, excepting the advantage of shortening the period of limitation for unbonded debts, the contingencies proposed to be provided for may be left to be determined by the existing law and to the adjudication of the Courts."

Whilst the Judges of the Sudder Adawlut designated the Bill as cumbrous and complicated, and drawn up in such technical language as to be ill suited to the comprehensions of the tribunals and people of that Presidency, and the Governor in Council fully concurred in the objection of the Court—the Bombay Sudder Court said:—

"The Court cannot refrain from expressing their regret to observe the publication of Bills clothed, as is this, in technical language only fairly intelligible to those who have had the advantage of an English legal education; because, by such practice, the Legislature would seem to ignore the fact that the vast majority of the Judges who have to dispense these laws, and the millions who are governed by them, can only have access to their meaning through the medium of translations, and it seems very questionable whether, among others, the Bill now before the Judges could be rendered into the vernacular languages of Western India."

He (Mr. Ricketts) thought that they could hardly ignore such opinions expressed by all the subordinate Governments.

Though our District Judges could not always be selected for their legal acquirements, they might understand such language; but such was not the case with the Moonsiffs, Sudder Ameens, Tehseeldars, Kardars, Mamlutdars, and other Native Judges with hard names in different parts of the country. It was not to be expected that they should generally understand such abstruse and technical provisions as those contained in this Bill. It had been suggested to him that alterations might be made when the Bill was in Committee of the whole Council, but he (Mr. Ricketts) could not see how it could be amended effectively in Committee. He should oppose the motion for going into Committee on the Bill, and if a majority voted with him, he would then move that the Bill be again referred to the Select Committee, with a request that they would so alter the phraseology as to make it easy for the translation, which would be necessary, into at least twenty different languages. As the Bill stood, this would be out of

the question. It might not be so difficult to render it into Persian and Arabic, but it would be impossible to translate it into Tamul, Teloogoo, Malayalim, and Canarese.

THE VICE-PRESIDENT wished that his Honorable friend had told the Council in what circumstances he and his friends had formed themselves into the Select Committee Extraordinary on this Bill, of which his Honorable friend had just delivered the Report. The late Sir William Maule, when at the Bar, was reported to have said once that he advisedly lunched on bread and cheese and porter, in order to reduce his faculties to the level of the Judges before whom he practised. He (the Vice-President) could not but fear that the Honorable Member and his intelligent friends must have subjected themselves to similar discipline if they really experienced such difficulty in understanding what was meant by the term "adverse possession" —of the meaning of which he (the Vice-President) imagined everybody who passed an examination for a Moonsiffship must be required to have some notion. His Honorable friend had taken the injudicious course of seeking to explain *ignotum per ignotius*. Puzzled by the words "adverse possession," he had referred to a text-book of English law, and had learned that an adverse possession might be commenced by disseisin. Now "disseisin" was a very technical word; and one which he (the Vice-President) would be sorry to introduce into an Indian Act. But "adverse possession" is a term which must almost necessarily enter into any system of law in which the English language is used. If the Honorable Member would take the trouble to refer to the published Reports of the Decisions of the Sudder Dewanny Adawlut, he would find it repeatedly used. On the application of the term, as used in the first Section, to the case of the horse, put by his Honorable friend, he would only say that he could not see how anybody could treat that possession as adverse which commenced under a contract, express or implied, and was consistent with that contract. The person who claimed the horse by reason of his possession would say nothing of the contract, but rest on his six years' possession; the party who proved that he was the real owner of the horse would show that there was such a contract, and insist that by reason of it the possession during the whole of the six years, or part of it, was not adverse to his title but consistent with it. He (the Vice-President) did not see how the Judges could avoid the use of the term if they had to deal with the question which the term involved.

He would now endeavor to meet the general charge of difficult and obscure phraseology. The Council was aware that the Bill was little else than a project of law, submitted long ago by the Law Commissioners, and then much discussed. Objections were then made to the phraseology, and the Commissioners then remarked, as he (the Vice-President) now remarked, that it was difficult to deal with a highly technical subject without using technical terms. When the present Bill was published, similar objections, many of them from persons of the highest authority, were undoubtedly made. Some of those objections were temperately, others somewhat extravagantly expressed. He (the Vice-President) confessed he was surprised by what he might call the judicial hysterics into which the perusal of the Bill seemed to have thrown a Member of the Sudder Court at Bombay, since he could not have imagined that to a gentleman holding such an office, it could or ought to be unintelligible.

But he could sincerely say that he had been most anxious to meet the objections; to simplify, as far as was consistent with the objects of the Bill, its provisions; and to make its language such as might be more readily translated. He had told the Members of the Select Committee that he had no predilection for the terms used; he had begged his Honorable friend, the Member for the North-Western Provinces, to whom his best thanks were due for the great care and attention which he had bestowed upon the measure; he had begged the Clerk Assistant of the Council, by whom, as by the Honorable Member for the North-Western Provinces, he (the Vice-President) would necessarily be guided on that subject, to suggest any alterations which would render the Bill more intelligible to Native Judges, and easy of translation into the Vernacular languages. The Select Committee had struck out what

seemed to be the most difficult Clauses, namely, those which prescribed rules for the calculation of the periods of adverse possession in different cases; and had substituted in the 7th Section what seemed to them to be a sufficiently simple definition of "adverse possession;" and a general rule prescribing the time from which it should be deemed to have commenced. They had made other alterations, but after going through the Bill over and over again, they felt that they could not make the Bill other than it now was, if they wished to effect its objects and retain the substance of its provisions. Now others might be more fortunate; and he could only say that he, and he believed the other Members of the Select Committee, would be most ready to consider any amendments that might be moved in Committee with the object of carrying the process of simplification farther. But the course taken by his Honorable friend, if successful, would throw out the Bill altogether. And he might observe that some of them who had objected to its language as it first stood, had expressed a desire that its substance should become law His Honorable friend had indeed said that he did not mean to throw out the Bill; that if he successfully resisted the motion to go into Committee, he would move that the Bill should be referred to the Select Committee, with a general direction to simplify it. Now he (the Vice-President) must beg to repudiate that indulgence. In the first place, he did not much like to take back his Bill as a school-boy receives a torn exercise from the school-master with directions to write another. His Honorable friend, who, since he had sat in the Council, had been more apt to take others to task for the quality of their work than to submit his own to criticism, might like the part of the school-master. He (the Vice-President) did not particularly affect that of the school-boy. But even if the sincere regard and esteem which he had for his Honorable friend induced him to waive this objection, he did not see how he could usefully undertake the task. His further stay in this country would be very short, and his time was fully occupied. Moreover, he and the Select Committee had already done their best, and, in the opinion of his Honorable friend, they had failed. What reason had they to suppose that, on a second attempt, they would be more successful with him, and those who thought with him. This process of sending back might be repeated over and over again. If the Council determined not to go into Committee, but to send the Bill back to a Select Committee, the better course was to appoint a new Committee, of which the Honorable Member himself might form part. He (the Vice-President) could promise to consider the alterations which that Committee might make in no captious spirit, but with a sincere desire to adopt them if they were improvements. But he feared that his Honorable friend, when he really addressed himself to the task of simplification, would find it to be not a very easy one; that he would run considerable risk of sacrificing substance to simplicity, and of finding himself in the position of Jack in the *Tale of the Tub*, who, in his zeal to strip his coat of its unhallowed embroidery, tore out so much of the cloth that the garment no longer answered the purpose for which it was designed.

MR. HARINGTON said, the Honorable and learned Vice-President having alluded in the remarks which had just been made by him in reply to the motion of the Honorable Member of Council opposite, to the part which he (Mr. Harington) had taken in the revision of the present Bill, he wished at this stage of the debate to say a few words on the subject. The objection which had been taken by the Honorable Member of Council to the phraseology of the Bill, as noticed by him, was not now advanced for the first time as a ground of complaint against this most important measure, for such he was sure all would allow it to be, and he could not but think that, whatever might be the defects of the Bill, and whether those defects were phraseological or otherwise, the Honorable Member of Council would admit that many of its provisions were an immense improvement upon the Law of Limitation as it now stood.

When a Bill for modifying the existing Statute of Limitation was first published for general information, now upwards of fifteen years ago, he (Mr. Harington) took exception to the language in which it was framed, and being one of the Judges of the Sudder Court

at Agra at the time the present Bill was referred for the consideration and opinion of that Court, he took a prominent part in drawing up the Court's reply. In that communication the Court remarked:—

"His Honor will also observes that many of the Zillah Judges have objected to the technical language of the Bill, which has rendered its translation a task of a most difficult nature, and, however well it may be executed, will, it is to be feared, be hardly intelligible to the great mass of the native community. On this point the Court can only repeat the objections taken by the Lieutenant-Governor of the North-Western Provinces to the technical form of the Draft Act published in 1842. In a country where the law is administered chiefly in the Native and not in the English language, of which the majority of the Judges entrusted with its administration are entirely ignorant, it is most desirable, and indeed absolutely necessary, that the Acts of the Legislature should be expressed in the simplest and plainest language. All technical phraseology, more particularly that of the English law, should be, as far as possible, avoided, so as to make the Act easy of translation into a language intelligible both to those who have to administer the law, and to the people whose interests it most materially affects. In this respect too, therefore, the Court consider the present draft to admit of great improvement.

Having committed himself to the opinion expressed in the paragraph which he had just read, at a time when he had little (if any) expectation of ever having the honor of a seat in this Council, it became his special duty, when that honor was conferred upon him, and when, moreover, he was nominated a Member of the Select Committee, appointed to consider and report upon the Bill, to give his best attention to the language of its several provisions, and to do what in him lay to divest the Bill, as far as possible, of the technical phraseology with which it was considered by some unnecessarily to abound, and which was regarded by many as constituting the chief, if not the sole, objection to the Bill. The desire to simplify the phraseology of the Bill, and to remove all objections on this score, was not confined to himself. It was most fully shared in by the other Members of the Select Committee, and by none more so than the Honorable and learned Mover of the Bill, to whom, for the great care and labor bestowed by him in its preparation, he considered this Council and the public at large were under very great obligations. Having had the honor of being associated with the Honorable and learned Mover of the Bill in its revision, he could testify to the extreme anxiety and earnest desire evinced by him, to render the Bill as simple in its language, and as complete and perfect in its provisions, as its character would admit of, and should the Bill pass into law, as he hoped it would, notwithstanding the opposition which it had met with from the Honorable Member of Council opposite, he believed that it would confer a lasting benefit upon the people of this country, and that in that season of *otium cum dignitate* which shortly awaited the Honorable and learned Mover of the Bill, after a long official career, in which he had won for himself the esteem and respect of all classes by the able and impartial manner in which he had discharged the arduous and responsible duties of his high office, he would have every right to look back with the utmost satisfaction upon this part of his labors.

The Select Committee, as noticed by the Honorable and learned Vice President, had struck out the Section of the Bill which defined when possession was to be deemed adverse, and had substituted for it a Section which they hoped would be intelligible to all persons. They had understood that it was the language of this Section, as it was originally framed, which was principally objected to. Even with this alteration the Select Committee were prepared to admit that the phraseology of parts of the Bill was still in some respects technical, but they did not see how this could be avoided. To quote the words of the report presented by the Select Committee to the Council, it must be obvious to all acquainted with the subject that it was quite impossible to frame a law of this nature without having recourse to terms which were used only in law papers or legal proceedings, and were, therefore, more or less technical. In writing a treatise upon chemistry or any other science, terms of art, or peculiar phrases, were necessarily introduced, which were properly understood only by those who were acquainted with the particular

science treated of, and in framing a law of limitation, the use of such words as "prescription," "adverse possession," "mediate and immediate," could scarcely be avoided. If, however, the Honorable Member of Council would propose the substitution of other words more intelligible, and conveying precisely the same meaning, he (Mr. Harington) would gladly give the Honorable Member his support.

The Honorable Member of Council had stated that the Bill, as at present worded, could not be translated, but it had already been translated into the languages of this Presidency, and, he presumed, into the languages in use in the other two Presidencies. The Honorable Member had also referred to some objections made by the Government translator at Bombay, but those objections applied not to this Bill only, but to almost all the Acts passed by this Legislature. If those objections were valid, and the difficulty of translating the Acts of the Council was to be a ground for not passing them, it was useless to proceed further with the Penal Code, which would prove much more difficult of translation than the Bill now under discussion.

MR. PEACOCK said that he was quite aware that it was hardly possible to prepare such a Bill as that at present before the Council without the use of technical terms; but with all deference to the Law Commissioners and the Honorable and learned Chief Justice, he thought this Bill difficult to be understood, and he feared it would be scarcely intelligible to many of the Judges who would have to administer it, whilst, in his opinion, it might be considerably simplified. The first Clause of the Bill ran thus—

"Subject to the exceptions and with the qualifications hereinafter mentioned, whoever has been in possession, mediate or immediate, as proprietor of any moveable property for the space of six years without interruption, shall acquire a title by prescription both at law and in equity."

He thought that it would be better to omit the first three lines referring to exceptions and qualifications, and to state the rule only in this Section, leaving exceptions to be provided for by the following Sections.

Mr. Harington

He would also omit the proviso in which it appeared to him that there was considerable ambiguity.

It was true that, by the 7th Section, it was explained when and to what persons possession should be deemed to be adverse; and the term "mediate," when applied to possession, was interpreted by the 35th Section of the Bill. But taking these Sections together, and applying them to a simple case, like the one which had been put of the hire of a horse, it was not easy to construe them.

Suppose a man hired a horse for two years, and at the expiration of that time refused to give it up, and kept it for four years longer; if at the expiration of that time the horse-dealer brought an action against him, would he be barred, according to the first Section?

No doubt the answer would be, after due consideration of the expressions "mediate or immediate" and "possession as proprietor," with the explanation given in Section VII of what was adverse possession, and the period from which it was to be calculated—that he was not barred. He (Mr. Peacock) apprehended, however, that considerable difficulty would be felt by the class of Judges who would necessarily have to deal with such questions in arriving at this conclusion.

He would propose to omit Sections I and II of the Bill, and to enact first a simple law of limitation of suits; provision might then be made for the protection of a possessor who had held possession so long that all remedy by suit against him was barred. If such a person were forcibly dispossessed, he ought to have the same remedies as the real owner for the recovery of possession, if he brought his suit within two years; and the defendant in the action should not be allowed to set up the title of the real owner as a defence.

MR. GRANT said that the question before the Council was, whether to proceed with the Bill, or to throw it out altogether? No amendment to the motion for going into Committee had been moved, and as he understood the Standing Orders, the Bill would be thrown out if the Honorable Member's (Mr. Ricketts') opposition were successful.

He (Mr. Grant) hoped very much that the Council would not object to go

on with the Bill. His Honorable friend opposite (Mr. Ricketts) had objected to its phraseology, but he must say that, although he had not had the advantage of a legal education like the Honorable and learned framer of the Bill, and his learned friend on his right (Mr. Peacock), or, as was the case with the Honorable Member for the North-Western Provinces, of having sat as an Indian Judge, and although he could only bring a plain understanding to the consideration of the Bill, he believed that he had a clear perception of the meaning of the first Clause, the obscurity of which had been so much objected to. He had found no difficulty in arriving at the meaning of "adverse possession," and he did not think that any one performing the functions of a Judge, if fit for the Bench at all, would fail to understand it. How, he would ask, could a case of prescription be decided at all, if the meaning of "adverse possession" was not understood? The Bill had been well considered by some very able Members of the Council, and no one denied that it would be, as the Honorable Member for the North-Western Provinces had pronounced it, a very great improvement on the existing law. As such, he (Mr. Grant) for one was ready to accept it; but at the same time, if the Honorable Member opposite, or any other Honorable Member of the Council, would devote himself to the subject, and hereafter bring in a better Bill, he (Mr. Grant) should be happy to support it. He trusted that the Council would not perpetuate what he had always found to be the great evil in India, the stoppage of practicable reform, because the measures proposed were not perfect. He would instance the case of the Penal Code, which had been prepared many years ago; and all improvement in that important matter had been stopped, because the Code was not considered to be quite perfect. There was no such thing as perfection to be found in human nature, and because such was the case, was that to be considered a reason why nothing should be done? He (Mr. Grant) would say, improve this Bill now before the Council as much as possible, and pass it, and then if, subsequently, another and a better Bill was introduced, by all means let it supersede the present. It was from what he had seen of the Penal Code that he had felt so strongly on this subject. He was almost afraid to say for how many years that important subject had been under consideration, [Mr. Harington—"a quarter of a century,"] yes, a quarter of a century, and during that long period, it did not seem to him to have advanced one single step nearer completion, because it was not considered perfect.

He would urge the Council to go into Committee on the Bill, and he felt that great obligations were due to the Honorable the Vice-President and the Select Committee for the care and attention which had been bestowed upon the measure.

THE VICE-PRESIDENT in reply begged to offer a few observations on the remarks made by the Honorable and learned Member (Mr. Peacock). With respect to his criticism on the first Clause, he could only repeat that the object was to give a title by prescription founded on a certain term of possession. That title might be asserted either by a person who had lost the actual possession and was claiming the thing as plaintiff; or by one who was defending his possession against a claim under another title. In either case the question would arise, whether there had been a six years' possession adverse to the title of the opposite party? In the case of the horse put by his Honorable and learned friend, there was not six years' adverse possession, because such possession was not adverse during the time in which the contract subsisted. This Bill, founded on that of the Law Commissioners, sought to establish the principle of a title by prescription, which might be asserted by persons either in or out of possession. He believed that the Honorable Member for Bengal intended to resist the introduction of this principle, and to oppose the first fifteen Sections. The effect of that would be, that, as at present, only the parties in possession could derive any benefit from that possession. As far as he could follow his Honorable and learned friend, he collected that the amendments which he intended to move would afford a sort of *via media;* that they would materially control the right of a defendant in an ejectment to set up the "*jus tertii,*" and

give to a former possessor the right of recovering on mere proof of possession against a forcible or fraudulent dispossession. His (the Vice-President's) present opinion was that such a measure would not be so complete or direct as that proposed by the Law Commissioners. He thought, however, that the Council ought to go into Committee: the Honorable Member for Bengal might then take the sense of the Council as to expunging the first fifteen Clauses of the Bill. If he were successful, the Honorable and learned Member might then move the substitution of his Clauses; or if the Honorable Member for Bengal were unsuccessful, those Clauses might be moved by way of amendment on the existing Clauses. But he (the Vice-President) was not sure that the better course would not be to postpone the consideration of the earlier Sections of the Bill until the amendments to be proposed on them were printed. There was always danger in adopting amendments in such a Bill as this without due deliberation. If this course were followed, the Council might confine itself today to the consideration of the Clauses of limitation.

MR. RICKETTS said, he had no wish to throw out the Bill altogether, and as it appeared that his opposition to the motion, that the Council should resolve itself into a Committee of the whole upon it, if successful, would have that effect, he would withdraw his opposition.

The Council then resolved itself into a Committee upon the Bill.

Section I provided for the acquirement of a title by prescription to moveable property.

MR. PEACOCK proposed the omission of this Section in order to substitute for it a Section for the limitation of suits to recover moveable property.

The VICE-PRESIDENT thought it would be better to postpone the first portion of the Bill, which related to title by prescription, and proceed with that which referred to limitations: if such a course was followed, the Committee would commence with Section XVI, which was the first relating to limitations.

MR. CURRIE said that amendments, such as those indicated by the Honorable and learned Member in his previous remarks, could not be satisfactorily dealt with, unless notice were given of them. He had himself intended, on the first Section being put from the Chair, to raise the general question, whether the principle of positive prescription, provided for in the first fifteen Sections of the Bill, should not be altogether abandoned?

The question was one upon which much doubt had all along existed. The Honorable Mover in his Statement of objects and reasons observed:—

> "The Bill now introduced differs somewhat in the arrangement of its Clauses from the Draft Act of the Law Commissioners. One reason for this difference is, that I wished to keep all the Clauses which related to positive prescription distinct from those which related to the limitation of suits; so that, if the Council should ultimately determine not to admit the principle of positive prescription, there should be no difficulty in striking out that part of the Bill."

He (Mr. Currie) was not prepared to maintain that the doctrine, that where the remedy has ceased the right also should be extinguished, might not, abstractedly considered, be correct; but there seemed to him to be considerable practical objections to its adoption.

Not the least of these was the extreme difficulty of providing for the application of the principle in language generally intelligible; almost the whole of the technicalities, to which objection had been taken both in the Council and elsewhere, occurred in the first part of the Bill; and were it got rid of, little ground of objection on that score would remain. He did not question that the language used in these Sections was as plain as the nature of the subject admitted, but it was still more or less obscure, and it could not be doubted that many of those who would have to administer the law would have great difficulty in understanding it, and then the question forced itself upon us—What are the practical inconveniences which are to be remedied by these fifteen difficult and, to the mass of readers, unintelligible Sections?

The testimony of those best informed on the subject seemed to show that no such inconveniences existed. The Calcutta and Madras Sudder Courts had

stated that the principle of the present law was sufficient, and they deprecated the introduction of this new principle of positive prescription.

Mr. Sconce said—

"Practically what is called our law of limitation operates in creating a prescriptive title in favor of the party whose seeming title has not been interrupted, and, by a civil suit questioned throughout the period of twelve years; and, practically, so far as my experience extends, the operation of this law, in itself, sufficiently guarantees that cessation of doubt and of litigation, which quiet, long, and honest possession is justly entitled to expect."

There was another objection to the principle that was so strongly insisted on by Mr. Thomason, that it was opposed to the feelings and sense of justice of the people.

The Honorable and learned Member opposite had alluded to the class of cases brought forward by Mr. Thomason in support of his views, and he (Mr. Currie) would not now dwell further on this part of the argument.

For these reasons, then, to which he had only briefly alluded, namely, because the change was not called for by any existing event or acknowledged inconvenience, while, from the obscurity of the terms in which it was propounded, its nature and effect would be ill understood by the mass of the people, and even by many of those who would have to administer the law; because it was opposed to the feelings and sense of justice of the people; and he might add, because an injurious use might, and (as apprehended by Mr. Sconce) in all probability would be made of it, causing an increase of what Mr. Sconce justly called "unwholesome litigation;" for these reasons he (Mr. Currie) thought that it would be better to omit the 1st and following Sections, as far as the 16th Section. This would be a simpler and more practicable course than that adopted by his Honorable and learned friend.

The consideration of Sections I to XV inclusive was then postponed.

Section XVI provided for the limitation of suits.

Clauses 1 to 3 were passed as they stood.

Clauses 4 and 5 were passed after verbal amendments.

Clause 6 was passed as it stood.

Clause 7 provided for the limitation for three years of suits for wages, tavern bills, goods sold by retail, &c.

MR. GRANT moved the omission of the words "the wages of servants, artisans, or laborers," and of the words "the amount of tavern bills, or bills for board and lodging, or lodging only," and their insertion in Clause 2, to which they more properly belonged.

The motions were severally agreed to, and the Clauses, as amended, then passed.

Clause 8 provided as follows:—

"To suits upon all debts and obligations of record, and upon specialties in cases governed by English law; to suits for the recovery of any devise or legacy; to suits for the recovery of any interest in immoveable property to which no other provision of this Act applies—the period of twelve years from the time the cause of action arose."

MR. CURRIE moved the omission of the word "upon" before "specialties."

Agreed to.

MR. PEACOCK proposed to omit the first part of the Clause as far as the words "by English Law." He remarked upon the distinction made by the English law between writings under seal and not under seal. It seemed to him that the mere affixing a seal to a document should not alter its legal operation.

THE CHAIRMAN would wish to retain the twelve years' prescription for English bonds and obligations under seal. The Law Commissioners had yielded to the remonstrances of Sir Lawrence Peel and Sir Henry Seton on this point. They had also put certain Mofussil securities on the same footing. The Select Committee finding that opinions in the Mofussil were generally against the extended period of limitation in the latter case, had struck out that part of the Clause. But without going into the *rationale* of the effect given to a seal, it must be recollected that debts by specialty were now in the Supreme Courts subject only to a limitation of twenty years, that they were in general use, and were ordinarily executed in an attorney's office, and with that degree of solemnity which made the preservation of the evidence concerning them more easy. He should not like to make

so sudden and violent an alteration in the law, as would be involved in putting such obligations on the same footing as simple contracts.

The Committee then divided on the motion.

Ayes. 3	*Noes.* 4
Mr. Forbes.	Mr. Harington.
Mr. Peacock.	Mr. Currie.
The Chairman.	Mr. Ricketts.
	Mr. Grant.

So the motion was negatived.

MR. GRANT moved to transpose the words "in cases governed by English law," so that they should follow immediately after the word "suits" in the first line of the Section.

Agreed to.

MR. PEACOCK moved the omission of the words "devise or" in the sixth line, and the words "to suits for the recovery of any interest in immoveable property to which no other provision of this Act applies" in the latter part of the Section.

The motions were severally carried, and the Clause, as amended, was passed.

Clause 9 was passed as it stood.

The consideration of Clauses 10 and 11 was postponed.

Clause 12 was passed as it stood.

Sections XVII to XXI were passed as they stood.

The consideration of Sections XXII to XXVI was postponed.

Section XXVII was passed after a verbal amendment.

The consideration of Section XXVIII was postponed.

Sections XXIX and XXX were passed as they stood.

Section XXXI was passed after the substitution of two for three years as the period of limitation in respect to suits instituted after the passing of this Act.

Section XXXII was passed after a verbal amendment, and the substitution of three for twelve years as the time for enforcing execution of decrees &c. of a Civil Court.

MR. PEACOCK moved the introduction of the following new Section after Section XXXII :—

"Nothing in the preceding Section shall apply to any judgment, decree, or order in force at the time of the passing of this Act, but process of execution may be issued either within the time now limited by law for issuing process of execution thereon, or within three years next after the passing of this Act, whichever shall first expire."

Agreed to.

Section XXXIII was passed after the substitution of one year for two years, as the time for enforcing execution of a summary award of any Civil Court or revenue authority.

MR. PEACOCK moved the introduction of the following new Section after Section XXXIII :—

"Nothing in the preceding Section shall apply to any summary decision or award in force at the time of the passing of this Act, but process of execution may be issued either within the time now limited by law for issuing process of execution thereon, or within two years next after the passing of this Act, whichever shall first expire."

Agreed to.

The further consideration of the Bill was postponed, and the Council resumed its sitting.

BREACHES OF CONTRACT.

MR. FORBES moved that a communication received by him from the Madras Government be laid upon the table and referred to the Select Committee on the Bill "to provide for the punishment of Breaches of Contract by Artificers, Workmen, and Laborers in certain cases."

Agreed to.

PRESCRIPTION AND LIMITATION.

THE VICE-PRESIDENT moved that the petition of the landholders of Bengal, this day presented to the Council, concerning the Bill "to provide for the acquirement and extinction of rights by Prescription and for the Limitation of Suits," be printed.

Agreed to.

THE INDIAN PENAL CODE.

MR. LEGEYT moved that a communication, received by him from the Bombay Government, on the subject of rendering the offer of a bribe to Public Officers generally an offence, be

laid upon the table and referred to the Select Committee on the "Indian Penal Code"

Agreed to.

CIVIL PROCEDURE.

MR. PEACOCK gave notice that he would this-day three weeks move for the re-committal of the Bill "for simplifying the Procedure of the Courts of Civil Judicature not established by Royal Charter."

The Council adjourned.

Saturday, January 29, 1859.

PRESENT:

The Hon'ble the Chief Justice, *Vice-President*, in the Chair.

Hon. Lieut.-Gen. Sir J. Outram,	E. Currie, Esq.,
Hon. H Ricketts,	H. B. Harington, Esq.,
Hon. B Peacock,	H. Forbes, Esq.,
P. W. LeGeyt, Esq.,	and
	Hon. Sir C. Jackson.

NEW MEMBER.

SIR CHARLES JACKSON was duly sworn, and took his seat as a Legislative Councillor of the Council of India.

MERCHANT SEAMEN.

THE VICE-PRESIDENT read a message informing the Legislative Council that the Governor-General had assented to the Bill "for the amendment of the law relating to Merchant Seamen."

CRIMINAL PROCEDURE.

THE CLERK reported to the Council that he had received, from the Home Department, papers relative to the rules and practice in force in the Punjab regarding the preparation of the Thannah records in Criminal cases.

MR. PEACOCK moved that the communication be referred to the Select Committees on the Criminal Procedure Bills.

Agreed to.

PRESCRIPTION AND LIMITATION.

THE VICE-PRESIDENT asked the Council to defer the further consideration of the Bill "to provide for the acquirement and extinction of rights by Prescription and for the Limitation of Suits" for a fortnight, as he had not had time and opportunity to consider the proposed amendments, which had only reached him the day before; and as his Honorable and learned friend Sir Charles Jackson and himself had both the Supreme Court and the Insolvent Court to attend to, he feared that he might not be able to attend the next meeting of the Council.

REMOVAL OF PRISONERS.

MR. CURRIE moved that the Council resolve itself into a Committee of the whole Council on the Bill "to make further provision for the removal of Prisoners;" and that the Committee be instructed to consider the Bill in the amended form in which the Select Committee had recommended it to be passed.

Agreed to.

The Bill was passed through Committee without amendment; and the Council having resumed its sitting, it was reported.

FRAUDULENT TRANSFERS AND SECRET TRUSTS.

MR. LEGEYT moved that the Bill "for the prevention of Fraudulent Transfers of property and of Secret Trusts" be referred to a Select Committee consisting of Mr. Harington, Mr. Forbes, Sir Charles Jackson, and the Mover.

Agreed to.

The Council adjourned.

Saturday, February 5, 1859.

PRESENT:

The Hon'ble John Peter Grant, in the Chair.

Hon. Lieut.-Gen. Sir J. Outram,	E. Currie, Esq.
Hon. H. Ricketts,	H. B. Harington, Esq., and
Hon. B. Peacock,	H. Forbes, Esq.
P. W. LeGeyt, Esq.,	

LEASES OF GHATWALEE LANDS (BEERBHOOM).

MR. CURRIE presented the Report of the Select Committee on the Bill "to empower the holders of Ghatwalee lands in the District of Beerbhoom to grant leases extending beyond the period of their own possession."

ESTATE OF THE LATE NABOB OF THE CARNATIC.

MR. FORBES moved that a Bill "to amend Act XXX of 1858 (to provide for the administration of the Estate and for the payment of the debts of the late Nabob of the Carnatic)" be now read a first time.

He said, in rising to move the first reading of a Bill to amend an Act introduced by another Honorable Member, and that Honorable Member the learned gentleman on his left (Mr. Peacock), he owed it to himself to state that he did it with that learned gentleman's concurrence. As soon as he received from Madras the papers in which the necessity for this Bill was shown, he communicated them to the learned gentleman, who, with his usual readiness to give aid and assistance, drew the Bill which he was presently to introduce, and expressed his willingness that he (Mr. Forbes) should bring it in. He was led to say this much in order that it might not be supposed that, without communication with the learned gentleman, he had put himself in a position that, it might be considered, would be more properly, as well as more ably, filled by him.

Act XXX of 1858 was passed for the administration of the estate and the payment of the debts of the late Nabob of the Carnatic. It was doubted whether, under Act I of 1844, a law passed to protect the Nabob from civil and criminal process, any creditor could enforce his claim against the Nabob's property without special leave from Government, and Act XXX was passed to remove all disabilities, and to give creditors the means of readily and inexpensively obtaining payment of all their just demands.

It was provided in Section XIV of the Act, that all claimants willing to receive the amounts they might actually have advanced, or the value of goods which they might actually have delivered, with interest at six per cent. from the date of the last payment of interest by the Nabob, should file a declaration to that effect in the office of the Registrar of the Supreme Court within three months of the date of the passing of the Act; and in Sections XIX and XX it was provided that a day should be fixed for the hearing of each case on the application of the creditor, notice of the day and full particulars of his claim being given to the Government Solicitor by the claimant at the time the application was made.

The Act was passed on the 24th of August, and within the limit of three months prescribed by Section XIV three hundred and ninety-two claims had been registered. Since the limit of three months expired, or since the 24th of November, more than two months more have elapsed, or five months in all since the Act was passed, and yet up to this time application for a hearing, with notice and particulars of claim, had been made in only twenty-seven cases.

Now it might be remembered that, while Act XXX was under discussion, the creditors of the late Nabob were clamorous for an early settlement of their demands, and their present inaction is certainly very inconsistent with their formerly expressed anxiety for speed, and it would be very difficult, even were there nothing to corroborate the suspicion, to dismiss from the mind an impression that all the claims which might be so easily brought to a hearing, and were yet kept back, might not be *bonâ fide*. But this impression was very greatly strengthened by the fact that very lately two of the late Nabob's seals had been feloniously abstracted, and this fact, coupled with the delay in making application for

hearing, led to strong suspicion that fraudulent claims had been made by some parties, which were to be supported by forged documents

It was to protect the Government from such frauds that the present Bill had been prepared It was necessarily general in its application, and if its provisions were somewhat stringent, he thought that this Council would admit that stringent measures might most justly be taken with parties who, having had the offer of a most favorable settlement of claims, which it was very doubtful if they had otherwise any legal means of enforcing, took advantage of the terms of that offer to practise fraud against the Government that made it

In the Act as already passed, no limit was assigned within which particulars of claims should be stated, and no provision was made for the filing of the documents by which claims were to be supported, and at present all claimants who, having filed their declarations, had not yet applied for a hearing, might at their leisure prepare particulars to support their gross demands, while the abstraction of the late Nabob's seals at the same time put it in their power to prove their demands by fraud

It was provided therefore in this Bill, that all parties claiming under Act XXX should register in the office of the Registrar of the Supreme Court full particulars of their claims, with dates and items, and also all the documents on which they relied for proof, within one week of the date on which the Act might be published in the Fort St. George Gazette, or within such further time, not exceeding one month in all, as the Court might allow The rule therefore would be one week, but, in order that no hardship might accrue to any person who might satisfy the Court that, from not having seen the Act, or from any other cause, it was out of his power to comply with its requirements within the more limited time, a period of not more than one month in all might be allowed by the Court, and if the requirements of the Act as regarded the statement of particulars be not complied with within that enlarged period, the claimant would be debarred from the special benefit of Sections XIV and XXV of Act XXX of 1858, and would be left to make his application for an administration of the Nabob's Estate, as provided in Section VIII of the Act If the requirements of the Act be not complied with as regarded the filing of documents, the claimant would be debarred from using in evidence all documents which he had not filed

It was further provided that the Government Solicitor should be allowed to inspect and take copies of all particulars and all documents that might be filed under this Bill, and, in order that the Government might be able at once to bring any claim to a hearing, it was further provided that the Court might fix a day for the investigation of any case on the application of the Government, in the same manner as in Section XIX of Act XXX it was provided that a day might be fixed on the application of the creditor, and on failure of the claimant to appear on the day so fixed, and on proof of the service of notice, the Court might bar him from the benefits of Sections XIV and XXV of the Act, and he will be left, as in the case of his omitting to file particulars of his claim, to an application for the administration of the Nabob's Estate

He had said that this Bill was drawn by the learned gentleman, and he would only add that it had been shown to the learned Chief Justice, and he was authorized to state that, with a slight alteration which had been made at his suggestion, that learned gentleman had no objection to its provisions, or to a suspension of the Standing Orders, so that it might at once become law.

The Bill was read a first time.

MR FORBES then said, he had, in introducing this Bill, explained to the Council the grounds on which it was brought in, and its general provisions He had only now to say a very few words in explanation of why he pressed for its being passed immediately

He had said that three hundred and ninety-two claims had been registered, and that in twenty-seven only had particulars been given Those twenty-seven cases amounted to more than twenty-seven lacs of Rupees, and, although there was not reason to believe that the others would individually average so large a sum as these twenty-seven, there was still no doubt that the

claims would altogether reach a very large sum.

If this Bill should not pass through all its stages to-day, it could not reach Madras for more than three weeks from this time, and yet, while he was now speaking, it was more than probable that parties were taking advantage of the time the law had given them, and of the possession of the Nabob's seals, to concoct particulars to suit their gross claims, and to prepare documents to support them.

The Bill had been considered by the learned gentleman and by the learned Chief Justice, who were both Members of the Select Committee on the Act which it was proposed to amend. He believed he was correct in saying that the Honorable and learned gentleman was of opinion that the Bill should at once become law, and he had the authority of the learned Chief Justice to say that he had no objection.

He moved, therefore, that the Standing Orders be suspended, in order that this Bill might be at once passed through its several stages.

MR. PEACOCK thought the Standing Orders should be suspended and the Bill passed without delay. There was no doubt that attempts were being made to practise a very extensive fraud on the Government, and if the usual course was pursued, intimation of the steps about to be taken by the Government would reach Madras long before the Act itself was in force, which would render the measure of far less utility than it would otherwise be.

The Madras Government stated that there was reason to believe that great efforts were being made to concoct and fabricate documents in support of fictitious demands, and that, although six months had elapsed since the passing of Act XXX of 1858, the particulars of only twenty-seven claims had been furnished, although no less than three hundred and ninety-two declarations had been filed. Before the passing of Act XXX, the creditors of the late Nabob had been clamorous for their money, and yet when the Bill was passed, and a liberal arrangement made by the Government, only twenty-seven creditors had come forward to file particulars of their claims. This of itself was suspicious, and the abstraction of two of the late Nabob's seals could leave scarcely a doubt of an intention to fabricate documents in support of fictitious demands. He (Mr. Peacock) begged leave to second the motion.

The motion was then put, and agreed to.

MR. FORBES moved that the Bill be now read a second time.

The motion was carried, and the Bill read a second time.

MR. FORBES moved, that the Council resolve itself into a Committee upon the Bill.

Agreed to.

Sections I and II were passed as they stood.

Section III was passed after a verbal amendment and the addition of the following words:—

"And in such case the claimant shall not be entitled to proceed under Section XIV or any subsequent Section of the said Act, or to be paid under the provisions of Section XXV of the said Act."

Sections IV and V were passed as they stood.

Section VI was passed after a verbal amendment.

Section VII was passed after an amendment.

Sections VIII and IX were passed as they stood.

Section X was passed after an amendment.

Section XI was passed after an amendment.

MR. PEACOCK moved the insertion in the Preamble of the words "unlawfully taken away by some person or persons unknown, and there is reason to believe that they have been" before the words "feloniously stolen."

MR. CURRIE said, he had an amendment to propose in an earlier part of the Preamble. He thought it would be better to omit all mention of the seals, and he would, therefore, propose to omit the words "since the passing of the said Act, two of the seals formerly belonging to the Nabob have been feloniously stolen."

MR. FORBES thought it necessary to mention the fact of the seals having been stolen, as a ground for the course of action taken with regard to the Bill.

MR. PEACOCK said, the Council were now amending an Act, and adopting a very stringent measure; he thought that the abstraction of the seals should be mentioned as a justification of the course proposed. Though there was no direct evidence of fraud, it was clear that efforts were being made to concoct fictitious claims. The Madras Government had spoken without doubt on this subject, and in the letter of the Advocate-General of Madras it was stated—

"The recent felonious abstraction of two of the late Nabob's seals and information connected therewith, points strongly to an intention to fabricate Bonds bearing date during the time of the Regency of Prince Azeem Jah, when those seals were actually used to authenticate Sircar Bonds."

He (Mr. Peacock) thought the fact should be stated as a ground for believing that fraud was about to be committed.

MR. CURRIE'S motion was put and negatived.

MR. PEACOCK'S motion was then put and agreed to.

The Title was passed as it stood.

The Council having resumed its sitting, the Bill was reported with amendments.

MR. FORBES moved that the Bill be now read a third time and passed.

The motion was carried, and the Bill read a third time.

MR. FORBES moved that Mr. Peacock be requested to take the above Bill to the Governor-General for his assent.

Agreed to.

REMOVAL OF PRISONERS.

MR. CURRIE moved that the Bill "to make further provision for the removal of prisoners" be now read a third time and passed.

The motion was carried, and the Bill read a third time.

MR. CURRIE moved that Mr. Peacock be requested to take the above Bill to the Governor-General for his assent.

Agreed to.

ADJOURNMENT.

MR. FORBES moved that the Council be adjourned for ten minutes.

Agreed to.

The Council adjourned accordingly.

The Council afterwards met pursuant to adjournment.

ESTATE OF THE LATE NABOB OF THE CARNATIC.

MR. PEACOCK returned to the Council Chamber with the Bill "to amend Act XXX of 1858 (to provide for the administration of the Estate, and for the payment of the debts of the late Nabob of the Carnatic)," and delivered it to the President, who thereupon announced that the Governor-General had signified his assent to the same.

The Council adjourned.

Saturday, February 12, 1859.

PRESENT:

The Hon'ble the Chief Justice, *Vice-President*, in the Chair.

Hon. Lieut. Gen. Sir J. Outram,	E. Currie, Esq.,
Hon. H. Ricketts,	H. B. Harington, Esq., and
Hon. B. Peacock,	H. Forbes, Esq.
P. W. LeGeyt, Esq.,	

CANTONMENT JOINT MAGISTRATES: REMOVAL OF PRISONERS.

THE VICE-PRESIDENT read messages informing the Legislative Council that the Governor-General had assented to the Bill "for conferring Civil jurisdiction in certain cases upon Cantonment Joint Magistrates, and for constituting those Officers Registers of Deeds," and to the Bill "to make further provision for the removal of prisoners."

LIMITED LIABILITY.

THE CLERK presented a petition from the Bengal Chamber of Commerce, praying for the extension of the principle of Limited Liability to Banking Companies.

MR. CURRIE moved that the petition be printed.

Agreed to.

AHMEDABAD MAGISTRACY.

MR. LEGEYT presented the Report of the Select Committee on the Bill "to empower the Governor in Council of Bombay to appoint a Magistrate for certain districts within the Zillah Ahmedabad."

MUNICIPAL ASSESSMENT (BOMBAY).

MR. LEGEYT postponed the first reading of a Bill to amend Act XXV of 1858 (for appointing Municipal Commissioners, and for raising a Fund for Municipal purposes in the town of Bombay).

PRESCRIPTION AND LIMITATION.

Upon the Order of the Day being read for the adjourned Committee of the whole Council on the Bill "to provide for the acquirement and extinction of rights by Prescription and for the Limitation of Suits," the Council resolved itself into a Committee for the further consideration of the Bill.

Upon Section 1 being proposed—MR. CURRIE said that he had given notice of his intention to move, as an amendment, the omission of the first and fourteen following Sections of the Bill. He had already stated the reasons why he considered this course advisable when the Bill was before the Council on a previous occasion; and, as he understood that the Honorable and learned Member who had introduced the Bill was now disposed to accede to the proposition, he would not detain the Council with a repetition of them. He should vote against the Section standing part of the Bill.

THE CHAIRMAN said that he had no intention of opposing the omission of these Sections, but he was bound to say that he thought the Bill would be more complete and efficient with them, than it was likely to be if they were omitted. He (the Chairman), notwithstanding the stress which had been laid upon the point, thought that those who would have to administer the law would have no real difficulty in understanding or applying the Clauses relating to prescription. He felt, however, that the principle of positive prescription was new to the law of this country; that, although many of high authority outside the Council were in favor of its introduction, many were opposed to it. He was not satisfied that he could carry these Clauses through the Council, and, if he did, he should not like to carry a change in the law, upon the expediency of which there was so considerable a conflict of opinion, by a narrow majority.

The Council must bear in mind, however, that if the Bill were passed as proposed, with the omission of the first fifteen Sections, a very material point would be left untouched. The Clause which his Honorable and learned friend (Mr. Peacock) was about to propose, would go far to meet one of those mischiefs to remedy which he (the Chairman) was anxious to introduce the principle of a title by positive prescription to land or other immoveable property. But it would do nothing towards defining the law relating to easements, or the rights which one man may have over the adjoining land possessed by another, to their acquisition, protection, or extinction. To put the law relating to easements on a more satisfactory footing, it had been found necessary to introduce the principle of positive prescription into the law of England. This Bill, if amended as proposed, would leave the law on this subject untouched, and in a very unsatisfactory state.

It was said that the subject would be dealt with by a separate measure. He (the Chairman) rarely heard that promise made without some apprehension touching its performance. In the present case he could but hope that the promise would be kept, and that his Honorable friend, the Member for the North-Western Provinces, who had devoted so much time and care to the present Bill, would take the matter in hand, and introduce a measure which would be satisfactory.

MR. HARINGTON said, having signed the Report of the Select Committee, in which the Committee had expressed themselves in favor of the introduction of a positive prescription, and recommended to the Council that the

first fifteen Sections of the Bill should be adopted, he desired to offer a few remarks in explanation of the course which he had made up his mind to pursue on the present occasion. He was bound to admit that, at the time he entered upon the duty which devolved upon him as a Member of the Select Committee appointed to consider and report upon this Bill, which proposed, for the first time, directly to introduce the principle of positive prescription into the Presidencies of Bengal and Madras (for at Bombay it had already obtained upwards of thirty years, at least in those parts of that Presidency which were not subject to English law), he had no very strong prejudice in favor of the principle, nor any very decided conviction as to the necessity of its introduction where it did not at present exist; and, although as the revision of the Bill proceeded, and he had an opportunity of further considering the subject, and of hearing it discussed, both in Committee and out of Committee, by much abler and more competent judges than himself, the principle grew in favor with him, and he became the more anxious for its adoption, he did not think now, any more than he had thought before, that the practical usefulness of the Bill would be impaired in any great degree, even though the Committee, acting upon the motion of the Honorable Member for Bengal, should determine to omit the provisions, under the operation of which a title to real or personal property might be acquired by prescription alone, much less that they would be right in abandoning the Bill altogether simply by reason of the omission of those provisions. He thought there could be no doubt that the most useful and important part of the Bill, and the part which, in practice, would come most frequently into action, were the Sections which related to limitation, using that term in the sense of a bar to a civil action, and that those were the Sections which were most needed. The great length of time allowed by the existing law for the institution of suits, extending, in some instances, to sixty years, while, in other cases, there was no limit in point of time, had long formed a ground of complaint against our judicial system, and to this source had been traced much of the perjury and forgery which were a disgrace to our Civil Courts, and which, in the hands of designing men, were so often made the means of converting those Courts from Courts of justice into Courts of injustice. An opinion to this effect was given by him when the expediency of modifying the existing Statute of Limitations, with a view to a considerable reduction of the period allowed therein for preferring claims, was first discussed, now nearly sixteen years ago, and subsequent experience had not led him to alter the views then expressed. At the same time, looking to the very long period that the present Bill had been before the public, to the men who introduced it, and to those who had succeeded them in carrying on the Bill until it had reached its present stage, men of great ability, large experience, and sound judgment, to the favorable reception which the Bill had generally met with, and, above all, to the fact that the Council, by allowing the Bill to be read a second time, had, in some measure, committed themselves to the principle of positive prescription; looking, he said, to all these circumstances, it had certainly seemed to him open to question whether they would now be justified in rejecting the principle merely because there might be some difficulty in so wording the provisions of the law necessary to carry it out as to render them perfectly intelligible to all classes, as well those whose duty it would be to administer the law, as those who would be affected by it, which appeared to be one of the principal objections taken to the Sections to which the amendment of the Honorable Member for Bengal related. He believed he was correct in stating that prescription had existed in some form or shape under the law of every civilized nation except the Jewish, according to which all lands, not in the hands of the real owners, were restored to them at certain periods. Under the old Roman Civil Law prescription existed; it exists in Scotland at the present time; it existed in England as regarded what were called easements; it existed, as already noticed, at Bombay; it existed under the Hindoo law; it existed in the United States of America, and he believed it existed in France also; and they were not told that in any of those places any difficulty was experienced in

administering the law, under which a title by prescription could be acquired or enforced, by reason of the technical character of the language in which it was framed, or that, in practice, prescription operated with greater injustice as an instrument of the acquisition of property than it did as an instrument of exemption only from the service or issue of judicial process, and if in the places, to which he had referred, legislators had been found competent to the task of framing a law of prescription sufficiently simple in its language to admit of its being administered by those who were ordinarily appointed to the judicial bench in the places in question, he could not conceive that the difficulty so much dwelt upon now would prove insurmountable here. But, as several old and experienced Officers, including the Honorable Member for Bengal, whose opinions were undoubtedly entitled to great consideration, entertained strong objections to the introduction into the Bill before the Committee of provisions of law for the acquirement and extinction of rights by prescription, and some of those Officers believed that a law of positive prescription would not be understood by the people, and that it would be regarded by them as doing violence to their feelings, prejudices, and ideas of what was just; that, moreover, there would be great difficulty in working such a law in an equitable manner, and that no absolute necessity for its enactment at the present time had been shown to exist—he was quite willing to give way, and, allowing the motion of the Honorable Member for Bengal for striking out the first fifteen Sections of the Bill to pass without opposition, to accept the remaining Sections as a large and valuable instalment of what was required in this particular branch of our judicial system: and he was disposed the more readily to give his assent to the amendment moved by the Honorable Member for Bengal, as he observed that the Honorable and learned Member of Council on his left (Mr. Peacock) had given notice of his intention to move the introduction of a Section which, if adopted by the Committee, would, to a great extent, produce the effect contemplated by the Sections proposed to be omitted, at least in so far as real property was concerned. Under the Section prepared by the Honorable and learned Member of Council, a party in possession of any real property, who should be ejected therefrom otherwise than by due course of law, would be able to maintain an action for the recovery of possession against even the owner of the property, and, should the proprietor of any real property allow any other party to hold possession of the same adversely to him for a certain period, he would lose his remedy at law, and his right and title becoming, in consequence, incapable of being asserted, they would in effect be transferred to the party whose possession was a bar. Moveable property, even if the Bill should be carried as drawn, would, he believed, rarely, if ever, be allowed to remain a sufficient length of time in the possession of any party adversely to the real owner to admit of his acquiring a title by prescription to the same; while as regarded what were called easements, in the existing state of society in the Mofussil, and in the absence of any substantive law relating to the rights of way, water, and the like, it might, perhaps, be inexpedient to declare in the present Bill that any person might acquire, by prescription, or enjoyment alone for a certain period, the right to some benefit, liberty, or privilege arising out of the immoveable property of some other person. But, to show how necessary it was, in respect of real property at least, that some rule of the nature of that proposed by the Honorable and learned Member of Council on his left should be adopted in the event of the whole of the Sections under discussion being omitted, he needed only to refer to the state of the North-Western Provinces in the early part of last year. At that period, in almost every district in those provinces above Benares, nearly half of the land-holders were stated to have lost possession of their estates, which were held by parties who had no legal right thereto; and, had it not been for the Bill introduced by him to facilitate the recovery of real property of which possession had been wrongfully taken during the late disturbances, he believed that many of the owners of the estates in question would have been unable to recover possession for the want of a law recognising a title by prescription, or

allowing a suit to be brought on the strength of a possessory title alone. He would only further remark, before resuming his seat, that the Bill before the Council, even though shorn of the Sections to which the motion of the Honorable Member for Bengal related, would still, he believed, prove a great boon to the people of this country, and he must repeat that he considered that the Honorable and learned Mover of the Bill had laid them under a great and lasting obligation to him for what he had done in this behalf.

MR. LEGEYT said he had one question to ask of the Honorable Member for Bengal, which was, whether he had considered what effect this Bill would have, if passed without the first fifteen Sections, upon the present law in Bombay? The existing law in Bombay was very short. Regulation V. 1827, Section I, of the Bombay Code, provided as follows:—

"*First.* Whenever lands, houses, hereditary offices, or other immoveable property, have been held without interruption for a longer period than thirty years, whether by any person as proprietor, or by him and his heirs, or others deriving right from him, such possession shall be received as proof of a sufficient right of property in the same.

"*Second.* But it shall be a sufficient answer to the plea of the possession for more than thirty years, that the person in possession as proprietor, or any of the persons by whom he derives his right, acquired such possession by fraudulent means, on proof whereof a suit may be entertained at any period within sixty years.

"*Third.* Provided that, if such property has been held for more than thirty years by a person or persons *bonâ fide* believing his or their title as proprietors to be good, such title shall not be affected by the fraud of a former possessor.

"*Fourth.* Nothing contained in this Section shall bar an action of damages brought within sixty years against any of the persons by whom the fraud was committed."

When the Bill was first published, the opinions received from Bombay were not favorable to the proposed measure; perhaps it was not sufficiently understood there: but he (Mr. LeGeyt) was not prepared to say that the Bombay authorities would, like a law which would abrogate the law in force there, which created a title to land by positive prescription, and had worked well in that Presidency for thirty years. He would ask the Honorable and learned Chairman, and his Honorable and learned friend opposite (Mr. Peacock), if the effect of the Bill, should it be passed, would not be to abrogate the law as it now stood in Bombay?

THE CHAIRMAN said, he apprehended that the Bill, if passed, would leave the law at present existing in Bombay as it stood; he did not think that the law of prescription in Bombay would be affected.

MR. PEACOCK agreed with the Honorable and learned Chief Justice. The provision of the Bombay law, which had been referred to, did not enact a law of positive prescription, but only, for the most part, a rule of evidence. The words were "such possession shall be received as *proof* of a sufficient right of property;" the present Bill, if confined to the limitation of suits, would leave untouched that provision.

He would support the motion to omit the first fifteen Sections. His chief objection was to Section XIV, which provided that no person should be barred by any length of time, unless a prescriptive title had been acquired by another person, or unless the right had been extinguished by prescription.

According to the provisions of the Bill, as it at present stood, no title by prescription could be gained, unless by possession for a period of twelve years. —Suppose A, the owner of an estate, allowed B to gain possession of it. B held the possession for ten years, and then let the property to C for one year; C refused at the end of the year to give up the possession, and before B regained it, the period of twelve years, from the time of his first gaining possession, became complete. Under the operation of the 14th Section, A's title would not be, affected, nor would his right of suit be barred, since no title had been acquired by B or C. But he thought that in such a case, a plaintiff, by lying by for an indefinite period, and neglecting to bring an action to recover his rights, would find it more easy to practise a fraud, than if the action must be brought in a definite time; and it also seemed to him that a person guilty of such lachés ought to be barred from all remedy. He thought it would be far better to make this Bill merely a Statute of Limitations,

and, in addition, to propose a Section to which the Honorable Member on his right (Mr. Harington) had alluded, by which a person, after having held possession for a certain period, would be entitled to an adequate remedy by suit to recover such possession if he were unlawfully dispossessed. The title of the real owner would, in such a case, remain unaffected, and if he sued within the period limited by the Act, he must recover the property, but, unless he did so, the possessor would become for most purposes the owner of the property, although the old title was not absolutely extinguished.

This course would obviate the objections of Mr. Thomason and others, and render it unnecessary, in the case of an owner returning after a long period, and the person in possession being willing to restore the property to such owner, that this should be done by conveyance.

Sections I to XV were put and negatived.

Section XVI was the first which related to the limitation of suits.

MR. CURRIE moved the omission of the words "other than a suit for property or rights to which the above rules are applicable" in the beginning of the Section.

Agreed to.

THE CHAIRMAN moved that the words "the British territories in India," after the word "within," in the fifth line of the Section, be left out, and the words "any part of the British territories in India, in which this Act shall be in force" substituted for them.

Agreed to.

Clause 1 of Section XVI was passed as it stood.

Upon Clause 2 being proposed by the Chairman—

MR. PEACOCK moved the omission of the words "penal damages or" in the first line.

The motion was carried, and the Clause, as amended, then passed.

Upon the consideration of Clause 3 —MR. PEACOCK moved that the words "otherwise became final and conclusive," at the end of the Clause, be left out, and the words "would otherwise have become final and conclusive if no such suit had been brought" be placed in their stead.

Agreed to.

Clause 4 being proposed by the Chairman—

MR. PEACOCK moved that the words "final order of such Court or Officer," at the end of the Clause, be omitted, and that the words "decision, award, or order, sought to be set aside, or if an appeal shall have been preferred, from the date of the decision, award, or order of the Appellate Court" be substituted for them.

After some discussion, the motion was by leave withdrawn.

MR. PEACOCK moved that the words "order of such Court or Officer," at the end of the same Clause, be left out, and the words "decision, award, or order in the case" substituted for them.

Agreed to.

MR. PEACOCK moved the insertion of the words or "order in the case," at the end of Clause 5.

Agreed to.

Upon Clause 11 being proposed by the Chairman—

MR. PEACOCK moved that the words "at which such order shall have become final," at the end of Clause 6, be left out, and the words "of the final order in the case" substituted for them.

Agreed to.

MR. PEACOCK moved that the following new Clause be introduced after Clause 7, namely:—

"To suits brought to recover money lent, or interest, or for the breach of any contract, the period of three years from the time when the debt became due, or when the breach of contract, in respect of which the suit is brought, first took place, unless there is a written engagement to pay the money lent, or interest, or a contract in writing signed by the party to be bound thereby, or by his duly authorized agent."

The Clause was agreed to.

MR. PEACOCK moved the introduction of the following new Clause after the above, namely:—

"To suits brought to recover money lent, or interest, or for the breach of any contract in cases in which there is a written engagement or contract, and in which such engagement or contract could have been registered by virtue of any Law or Regulation in force at the time and place of the execution thereof; the period of three years from the time when the debt became due, or when the breach of contract in respect of which the action is brought, first

took place, unless such engagement or contract shall have been registered within six months from the date thereof."

The Clause was agreed to.

MR. CURRIE moved that the following new Clause be introduced after Clause 8, namely :—

"To suits for the recovery of immoveable property, or of any interest in immoveable property, to which no other provision of this Act applies—the period of twelve years from the time when the cause of action arose."

The Clause was agreed to.

The postponed Clause 10 being read by the Chairman—

MR. PEACOCK moved that the words "not being lands subject to or affected by any of the several provisions referred to in Section XXVIII of this Act," after the word "land" in the sixth line of the Clause, be left out.

Agreed to.

MR. CURRIE moved that the following proviso be added to the Clause, namely :—

"Provided that in estates permanently settled, no such suit, although brought within twelve years from the time when the title of such person first accrued, shall be maintained, if it is shown that the land has been held lakhiraj, or rent-free, from the period of the permanent settlement."

The amendment was agreed to.

The amended Clause was then put by the Chairman, and agreed to.

MR. PEACOCK moved that the postponed Clause 11 be struck off.

Agreed to.

MR. CURRIE moved that the following new Clause be introduced after Clause 11, namely :—

"To suits against a depositary, pawnee, or mortgagee of any property, moveable or immoveable, for the recovery of the same, a period of thirty years if the property be moveable, and sixty years if it be immoveable, from the time of the deposit, pawn, or mortgage; or if in the mean time an acknowledgment of the title of the depositor, pawner, or mortgagor, or of his right of redemption, shall have been given in writing, signed by the depositary, pawnee, or mortgagee, or some person claiming under him, from the date of such acknowledgment in writing."

The Clause was agreed to, and the Section as amended then passed.

MR. CURRIE moved that the following new Section be introduced after Section XVI, namely :—

"In suits for the recovery from the purchaser, or any person claiming under him, of any property purchased *bonâ fide*, and for valuable consideration from a trustee, depositary, pawnee, or mortgagee, the cause of action shall be deemed to have arisen at the date of the purchase."

The Section was agreed to.

THE CHAIRMAN moved that the following new Section be introduced after the above, namely :—

"In suits in the Courts established by Royal Charter, by a mortgagee, to recover from the mortgagor the possession of the immoveable property mortgaged, the cause of action shall be deemed to have arisen from the latest date at which any portion of principal money or interest was paid on account of such mortgage debt."

The Section was agreed to.

MR. PEACOCK moved that the words "either by a part payment on account of principal or interest or," after the word "due," in the 7th line of Section XIX, be left out. This part of the Section was in accordance with the English law, but he objected to the rule laid down by the English law respecting the effect of a part payment. That rule proceeded on the principle that a part payment operates as an acknowledgment from which a new promise to pay might be implied. It seemed to him that in this country proof of part payment should not have this effect.

After some discussion, the motion was carried.

MR. PEACOCK moved that the words "whether by part payment or by written acknowledgment," after the word "admission," in the 12th line of the Section, be left out.

Agreed to.

MR. PEACOCK moved that the words "provided that in every case in which such acknowledgment could have been registered by virtue of any Law or Regulation in force at the time and place of the signing of the acknowledgment, it shall be registered within three months from the date thereof,"

be inserted before the word "provided," in the 14th line of the Section.

Agreed to.

THE CHAIRMAN moved that the word "also" be inserted after the word "provided," in the 14th line of the Section.

Agreed to.

The Section as amended was then read by the Chairman, and passed as amended.

MR. PEACOCK moved that the following new Section be introduced after Section XX, namely :—

"If any person entitled to a right of action, shall, by means of fraud, have been kept from the knowledge of his having such right, or of the title upon which it is founded ; or if any document necessary for establishing such right shall have been fraudulently concealed, the time limited for commencing the action against the person guilty of the fraud or accessary thereto, or against any person claiming through him otherwise than in good faith and for a valuable consideration, shall be reckoned from the time when the fraud first became known to the person injuriously affected by it, or when he first had the means of producing or compelling the production of the concealed document."

The Section was agreed to.

THE CHAIRMAN moved that the words "for damages for wrong done by a concealed," after the word "suits," in the first line of Section XXI, be left out, and the words "in which the cause of action is founded on" be substituted for them.

Agreed to.

The Section as amended was then passed.

MR. PEACOCK moved that the following new Section be introduced after Section XXI, namely :—

"If, at the time when the right to bring an action first accrues, the person to whom the right accrues is under a legal disability, the action may be brought by such person or his representative within the same time after the disability shall have ceased, as would otherwise have been allowed from the time when the cause of action accrued, unless such time shall exceed the period of three years, in which case the suit shall be commenced within three years from the time when the disability ceased ; but if, at the time when the cause of action accrues to any person, he is not under a legal disability, no time shall be allowed on account of any subsequent disability of such person, or of the legal disability of any person claiming through him."

The Section was agreed to.

MR. PEACOCK moved that the following new Section be introduced after the above :—

"The following persons shall be deemed to be under a legal disability within the meaning of the last preceding Section—married women in cases to be decided by English law, minors, idiots, and lunatics."

The Section was agreed to.

The postponed Sections XXII and XXIII were severally read by the Chairman and passed.

The postponed Section XXIV having been put by the Chairman—

MR. PEACOCK moved that the words "unless service of a summons to appear in the suit can, during the absence of such defendant, be made in any mode prescribed by Law" be added to the Section.

The motion was carried, and the Section as amended then passed.

The postponed Section XXV was passed as it stood.

MR. PEACOCK moved that the following new Section be introduced after Section XXV, namely :—

"If any person shall without his consent have been dispossessed of any immoveable property otherwise than by due course of law, such person, or any person claiming through him, shall, in a suit brought to recover possession of such property, be entitled to recover possession thereof, notwithstanding any other title that may be set up in such suit, provided that the suit be commenced within six months from the time of such dispossession ; but nothing in this Section shall bar the person from whom such possession shall have been so recovered, or any other person instituting a suit, to establish his title to such property, and to recover possession thereof within the period limited by this Act."

He said that he had originally intended to provide only for cases of possession disturbed by force or fraud, but upon the advice of the Honorable Member for the North-Western Provinces he had made the Section general in its application, so that, upon proof of dispossession otherwise than by due course of Law, the Civil Court would entertain a suit for the recovery of the possession : if a title to the property was set up afterwards, it would not in any way be prejudiced by the decision in the possessing suit.

He (Mr. Peacock) thought that the proposed new Section would transfer to the Civil Court cases of the description which, under Act IV of 1840, were now heard by the Magistrate.

After some discussion, the Section was carried.

The postponed Sections XXVI and XXVIII were severally negatived.

MR. CURRIE moved that Section XXX be left out, and the following new Section be introduced before Section XVII, namely:—

"In suits to avoid sub-tenures or incumbrances instituted by the purchaser of an estate sold for arrears of Government Revenue due on such estate, or by the purchaser of a putnee talook or other saleable tenure, which by virtue of such sale became freed from sub-tenures or incumbrances created by the defaulting proprietor, or by any person claiming through such purchaser, the right of action shall be deemed to have first arisen at and not before the time at which the sale to such purchaser was confirmed or otherwise became absolute."

Agreed to.

MR. PEACOCK moved that Section XXXI be left out, and that the following new Section be substituted for it, namely:—

"All suits that may be now pending, or that shall be instituted within the period of two years from the date of the passing of this Act, shall be tried and determined as if this Act had not been passed; but all suits to which the provisions of this Act are applicable that shall be instituted after the expiration of the said period, shall be governed by this Act and by no other law of limitation, any Statute, Act, or Regulation now in force notwithstanding."

Agreed to.

THE CHAIRMAN moved that the following new Section be introduced before Section XXXII, namely:—

"No proceeding shall be taken to enforce any judgment, decree, or order of any Court established by Royal Charter, but within twelve years next after a present right to enforce the same shall have accrued to some persons capable of releasing the same, unless in the meantime such judgment, decree, or order shall have been duly revived, or some part of the principal money secured by such judgment, decree, or order, or some interest thereon shall have been paid, or some acknowledgment of the right thereto shall have been given in writing, signed by the person by whom the same shall be payable, or his agent, to the person entitled thereto or his agent; and in any such case no proceeding shall be brought to enforce the said judgment, decree, or order, but within twelve years after such revivor, payment, or acknowledgment, or the latest of such revivors, payments, or acknowledgments, as the case may be. Provided that, for three years next after the passing of this Act, every judgment, decree, and order, which may be in force at the date of the passing of this Act, shall be governed by the Law now in force, anything herein contained notwithstanding."

The postponed Sections XXXIV and XXXV were severally negatived.

MR. HARINGTON moved that the words "or place" be inserted after the word "province" in the 6th line of Section XXXVI.

Agreed to.

MR. PEACOCK moved that the words "by public notification" be inserted after the word "thereto" in the 7th line of the Section.

Agreed to.

THE CHAIRMAN moved that the words "and the Straits Settlement" be inserted after the word "Towns" in the 5th line of the Section.

Agreed to.

MR. PEACOCK moved that the following words be added to the Section, namely:—

"Whenever this Act shall be extended to any Non-Regulation Province or place by the Governor-General in Council, or by the Local Government to which such Province or place is subordinate, all suits, which within such Province or place shall be pending at the date of such notification, or shall be instituted within the period of two years from the date thereof, shall be tried and determined as if this Act had not been passed, but all suits, to which the provisions of this Act are applicable, that shall be instituted within such Province or place after the expiration of the said period, shall be governed by this Act and by no other Law of limitation, any Statute, Act, or Regulation now in force notwithstanding."

The motion was carried, and the Section as amended then passed.

MR. HARINGTON asked the permission of the Committee to go back to Section XIX of the original Bill. That Section, as it had just been settled, contained the following proviso:—

"Provided that in every case in which such acknowledgment could have been registered by virtue of any Law or Regulation in force at the time and place of the signing of the acknowledgment, it shall be registered within three months from the date thereof."

From a remark which had fallen from the Honorable Member for Bengal in the course of the discussion that had taken place on the motion for the introduction of this proviso, he (Mr. Harington) had been led to think that it went too far. He might instance the case of a tradesman in Calcutta applying by letter to an officer at a distant station for payment of a bill which had been some time due, and receiving a reply acknowledging the debt and containing a promise to pay. This acknowledgment and promise would not avail to exempt the claim from the operation of the law of limitation, or to give the tradesman the benefit of the rule contained in the former part of the Section, unless the reply was registered, but the officer could scarcely be expected to go through the form of registration, and the formalities required by law for registering deeds would prevent the tradesman from fulfilling the conditions of the Section as it now stood. Considering, therefore, that it would be better to omit the proviso, he begged to make a motion to that effect.

Agreed to.

Moved by the same that the word "also" after the word "provided" in the 14th line of the Section be left out.

The motion was carried, and the Section as amended then passed.

MR. PEACOCK moved that the Preamble be left out, and the following new Preamble substituted for it, namely :—

"Whereas it is expedient to amend and consolidate the laws relating to the limitation of suits, it is enacted as follows."

Agreed to.

MR. PEACOCK moved that the words "for the acquirement and extinction of rights by prescription and" be left out of the Title.

The motion was carried, and the Title as amended then passed.

The Council having resumed its sitting, the Bill was reported.

Mr. Harington

LEASES OF GHATWALEE LANDS (BEERBHOOM.)

MR. CURRIE moved that the Council resolve itself into a Committee on the Bill "to empower the holders of Ghatwalee lands in the District of Beerbhoom to grant leases extending beyond the period of their own possession;" and that the Committee be instructed to consider the Bill in the amended form in which the Select Committee had recommended it to be passed.

Agreed to.

The Bill passed through Committee without amendment, and, the Council having resumed its sitting, was reported.

CIVIL PROCEDURE.

On the Order of the Day being read for the re-committal of the Bill "for simplifying the Procedure of the Courts of Civil Judicature not established by Royal Charter," the consideration of the Bill was postponed.

MR. PEACOCK gave notice that he would, on Saturday next, move for the re-committal of the Bill.

The Council then adjourned.

Saturday, February 19, 1859

PRESENT:

The Hon'ble the Chief Justice, *Vice-President*, in the Chair.

Hon. J. P. Grant,	E. Currie, Esq.,
Hon. Lieut.-Gen. Sir J. Outram,	H. B. Harington, Esq.,
Hon. H. Ricketts,	H. Forbes, Esq., and
Hon. B. Peacock,	Hon. Sir C. Jackson.
P. W. LeGeyt, Esq.,	

RECOVERY OF RENT (BENGAL).

THE CLERK presented a petition from the British Indian Association suggesting certain amendments in the Bill "to amend the law relating to the recovery of Rent in the Presidency of Fort William in Bengal."

MR. CURRIE moved that the petition be referred to the Select Committee on the Bill.

Agreed to.

PROTECTION OF ENDOWMENTS AND DISTRICT MOONSIFFS (MADRAS).

THE CLERK presented a petition from Venkata Chellem, District Moonsiff of Ellore, enclosing two Drafts of Laws, for the better protection of endowments of temples and of mosques from misappropriation by trustees, and to amend the law relating to District Moonsiffs in the Presidency of Fort St. George.

MR. FORBES moved that the petition be printed.

Agreed to.

MUNICIPAL ASSESSMENT (TENASSERIM AND MARTABAN PROVINCES).

THE CLERK reported to the Council that he had received from the Foreign Department a correspondence with the Commissioner of the Tenasserim and Martaban Provinces, relative to a Draft Act for the appointment of Municipal Commissioners, and for levying rates and taxes in the towns of Moulmein, Tavoy, and Mergui.

MR. PEACOCK moved that the papers be printed.

Agreed to.

LEASES OF GHATWALEE LANDS (BEERBHOOM).

MR. CURRIE moved that the Bill "to empower the holders of Ghatwalee lands in the District of Beerbhoom to grant leases extending beyond the period of their own possession" be read a third time and passed.

The Bill was read a third time.

CIVIL PROCEDURE.

Upon the Order of the Day being read for the re-committal of the Bill "for simplifying the Procedure of the Courts of Civil Judicature not established by Royal Charter"—

MR. PEACOCK said that, as the printed papers relating to this Bill had only reached him late last evening, he had not had time to consider them, and he believed that the Bombay papers had not yet been printed. It would be better to postpone the consideration of this Bill until Saturday next.

MR. LEGEYT said that, as the papers alluded to by the Honorable and learned Member would require a great deal of consideration, it would be better to postpone the Committee of the whole Council on the Bill for a fortnight.

He (Mr. LeGeyt) understood that there was a paper from the North-Western Provinces, and two sets from Bombay, which required to be printed.

The consideration of the Bill was then postponed for a fortnight.

AHMEDABAD MAGISTRACY.

MR. LEGEYT moved that the Council resolve itself into a Committee on the Bill "to empower the Governor in Council of Bombay to appoint a Magistrate for certain Districts within the Zillah Ahmedabad;" and that the Committee be instructed to consider the Bill in the amended form in which the Select Committee had recommended it to be passed.

Agreed to.

The Bill passed through Committee without amendment, and, the Council having resumed its sitting, was reported.

LIMITATION OF SUITS.

MR. HARINGTON moved that the Bill "to provide for the Limitation of Suits" be re-committed to a Committee of the whole Council, for the purpose of considering an amendment which he wished to propose therein. He believed that the Honorable Member for Bengal had also some amendments to propose.

Agreed to.

MR. HARINGTON said that Clause 5 of Section I of the amended Bill was hardly consistent with the preceding Clause in so far as it related to suits to alter or set aside summary awards by Revenue officers in disputes regarding arrears and exactions of rent. Disputes of that nature were amongst the matters mentioned in Regulation VII. 1822 as cognizable by Revenue officers; and in order therefore to remove any doubt that might arise, he would move that the words "not falling within the last preceding Clause brought" be inserted after the word "suits" in the first line of Clause 5.

Agreed to.

MR. HARINGTON moved that the words "which shall have been" be inserted after the word "award" in the second line of the Clause.

Agreed to.

The Clause as amended was then read by the Chairman and passed.

MR. CURRIE moved that the following proviso be added to Section II, namely :—

"Provided that in the case of purchases from a depositary, pawnee, or mortgagee, no such suit shall be maintained unless brought within the time limited by Clause 14 Section I."

He thought that the Section was not quite correct as it stood, the maximum time in which suits could be brought against a depositary, pawnee, or mortgagee, by Clause 14 of Section I of the amended Bill, was thirty years for moveable and sixty years for immoveable property; so that, as it at present stood, if the immoveable property was sold after the expiration of fifty-five years, a new time of limitation would commence and run for twelve years more, making a total of sixty-seven years, which was never intended; but it was intended, if property was transferred by a *bonâ fide* purchase, that the period should be shortened, but not in any case lengthened.

After some discussion, the amendment was agreed to, and the Section as amended then passed.

MR. CURRIE moved that Section IV be omitted, and that the following new Section be substituted for it, namely:—

"In suits to avoid incumbrances or under-tenures in an estate sold for arrears of Government revenue due from such estate, or in a putnee talook or other saleable tenure sold for arrears of rent, which, by virtue of such sale, becomes freed from incumbrances and under tenures, the cause of action shall be deemed to have arisen at the time when the sale of the estate, talook, or tenure became final and conclusive."

Agreed to.

MR. CURRIE moved that Sections II, III, and IV be transposed, so as to stand after Section VII.

Agreed to.

MR. PEACOCK said that Section IX provided that in cases of fraud "the time limited for commencing the action against the person guilty of the fraud, or accessory thereto, or against any person claiming through him otherwise than in good faith, or for a valuable consideration, shall be reckoned from the time when the fraud first became known." It had been suggested to him by his Honorable friend on the right (Mr. Harington), that the words "by purchase" be inserted before the words "in good faith."

The motion was afterwards by leave withdrawn.

The Council having resumed its sitting, the Bill was reported.

MR. HARINGTON then moved that the Bill be republished for a period of two months.

Agreed to.

The Council adjourned.

Saturday, February 26, 1859.

PRESENT:

The Hon'ble the Chief Justice, *Vice-President*, in the Chair.

Hon. Lieut.-Gen. Sir J. Outram,	E. Currie, Esq.,
Hon. H. Ricketts,	H. B. Harington, Esq.,
Hon. B. Peacock,	H. Forbes, Esq., and
P. W. LeGeyt, Esq.,	Hon. Sir C. Jackson.

OATHS AND AFFIRMATIONS.

THE CLERK reported to the Council that he had received a communication from the British Indian Association, relating to the Bill "concerning Oaths and Affirmations."

MR. FORBES moved that the communication be printed.

Agreed to.

MADRAS POLICE.

MR. FORBES said, he rose to make the motion of which he had given notice under some embarrassment, because he was about to move the first reading of a Bill, of the principle of which he must, at the outset, tell the Council that he did not approve.

The measure of separating the executive from the judicial functions of the Magistrate was one which the Government of Madras had for some years had in contemplation, and had, on more than

one occasion, pressed upon the Government at home, and upon the Supreme Government of India It was one which, as was admitted by the Honorable Court, had divided the opinions of the most able men, and he must freely admit that his own opinion sided with those who doubted its political prudence

But, as he had already said, many far abler men had been in its favor, the Madras Government was most desirous of its introduction, and the Home Government had sanctioned the arrangement, in order that a practical solution might be had of what was now a disputed point

It had appeared to him that he was thus placed in circumstances which, in the position which he had the honor to hold as a representative Member of this Council, made it his duty to bring forward a measure which, although not approved by himself, was earnestly desired by the Government, and sanctioned by the Home Authorities, and he was very glad to be able to say that those friends whom he had consulted on the occasion had coincided in the view he had taken

He thought that, under all circumstances, he should be doing more justice to the Bill which he introduced, if, instead of speaking on the question himself, he let the Madras Government be heard in support of their own measure

In 1851 the Honorable Court of Directors addressed a Despatch to the Government of Fort St George, in which they said that their attention having been called to the arrangements proper to be adopted for the local administration in Bengal and Bombay, they had been led to believe that the system in force in Madras might also stand in need of revision, and, after describing the systems followed in the three Presidencies, they said—

"As the Bombay system of placing the Police Establishment under the immediate direction and control of a Superintendent of Police, although still experimental, has been reported to work satisfactorily, we are desirous that you should consider whether a similar arrangement might not be advantageously introduced into Madras"

In replying to this Despatch, the Government of Madras admitted that the state of their Police was most unsatisfactory They said—

"The Judges of the Fouzdary Adawlut have, with truth, remarked that the evil most felt in the administration of Criminal Justice, and which most loudly calls for remedy, is the want of an efficient preventive and defective Police The materials for such a Force, the Judges said, no doubt exist, which, if sufficiently strengthened and placed under adequate supervision, might be rendered all that is required but its present organization is extremely defective, and the degree of supervision which the Magistrates are able to exercise is by no means adequate The time of the Magistrates is principally devoted to their Revenue duties, and those who take the most active interest in the Superintendence of the Police, are debarred, by the other calls upon their attention, from devoting to it that unremitting care and supervision which are essential to the prevention and detection of crime"

The Government went on to say—

"Of the correctness of this representation by the Judges there can be no question, nor can it be denied that the inability of the present Police Establishment to cope with the prevailing amount of crime, or to ensure protection to person and property has latterly become more than ever marked and notorious"

"For the re organization of the stipendiary Police, and putting it upon an efficient footing, two measures seem to be indispensable, first, to separate Police from Revenue functions, and to confine the District Police absolutely to Police duties, and, secondly, to place the force thus set apart under close and undivided European superintendence The first of these measures will not only tend to secure that efficiency which is not to be expected when the Officer is liable to be employed on different and sometimes conflicting duties, but will serve to obviate the oppression which the late enquiry before the Commissioners for the investigation of Torture has shown to be incident to and favored by the concentration of Fiscal and Police powers in the same hands The second will ensure that discipline in the Force, and that promptitude and vigor in its action, which are indispensable to an efficient Police administration

"Commencing, then, with the Native District Police, we think that in every District those who are henceforth to be employed in Police duty should be wholly separated from Native Revenue servants

"For the management of the Force we would advocate recourse to the plan obtaining in the Bombay Presidency, and suggested to our consideration by your Honorable Court It is highly approved by the Judges of the Fouzdary Adawlut, who say that 'the separation of the judicial duties of the Magistrate, from those which relate to the prevention and detection of crime, appears an excel-

lent arrangement. It is, moreover, most desirable to have an Officer who may be available on any emergency to trace out serious crime on the scene of its occurrence, and in whose proceedings full confidence may be placed. This duty at present devolves on Native functionaries, whose proceedings are ordinarily very ineffective, and command no confidence, so that the judicial authorities have constantly to be on their guard against the machinations of the Police, by whom confessions are extorted and evidence concocted to save themselves from the stigma and consequences of failure in the detection of crime.

"In these views we quite concur."

* * * *

"The success of the scheme will, however, largely depend upon its being efficiently supervised by some central controlling authority. For this purpose we are disposed most strongly to advocate the appointment of a Commissioner of Police for the whole Presidency. * * He would make occasional tours in the Provinces, and ascertain, by personal inspection, the defects in the working of the system. He would be the referee and adviser of the Government in all matters of Police, and the channel through which all reports would be made to them. At present the Police of the country is nominally under the Fouzdary Adawlut, whose constitution is by no means peculiarly fitted for the trust, and who are too much occupied with other duties to give it much of their attention."

With reference to those parts of the Despatch from the Government of Madras which had been quoted above, the Honorable Court, in addressing the Government of India, on the 24th of September 1856, said—

"To remedy the evils of the existing system of Police, the first step to be taken is, wherever the union at present exists, to separate the Police from the administration of the land revenue. No Native Officer should be trusted with double functions in this respect.

"In the second place the management of the Police of each District should be taken out of the hands of the Magistrate, and be committed to a European Officer with no other duties, and responsible to a General Superintendent of Police for the whole Presidency."

And, finally, in a Despatch, No. 13 of 1857, the Honorable Court said that, although the principle of separating the judicial from the Police functions of the Magistrate had been strongly opposed by men of intelligence and experience, who considered that their views were more in accordance with Oriental ideas which recognized no division of functions, and regarded the ruler with as many deputies as might be needed, as exercising in his own person all the powers of the Government—a satisfactory solution of a question which had been fully and ably discussed on both sides, would be best obtained by a practical application of the two systems in different localities; and as the Court considered that the systems would be tried with the best advantage under the supervision of those who respectively favored them, they authorized the Madras Government to organize the Police of that Presidency on the plan they had recommended.

The Bill provided for the separation of the executive and judicial functions of the Magistrate in any part of the Presidency to which the Government might extend the Act, and in this respect was mainly based on Act XIII of 1856. It contained also several Sections regulating the procedure of the Police, some of which were provided for in the Penal Code, and some in the Code of Criminal Procedure. As it was uncertain when either of those Codes would pass into law, he had left these Sections in the Bill, and they could be struck out in Select Committee, if the passing of the Penal or Criminal Procedure Codes should render their retention unnecessary, or, if retained, they could be remodelled to suit such parts of those Codes as might be intended to have similar effect, and might have been finally amended and agreed upon by the Select Committee.

With these remarks he begged to move the first reading of a Bill "for the better regulation of the Police within the territories subject to the Presidency of Fort St. George."

The Bill was read a first time.

MUNICIPAL ASSESSMENT (BOMBAY).

MR. LEGEYT rose to move the first reading of a Bill "to amend Act XXV of 1858 (for appointing Municipal Commissioners, and for raising a Fund for Municipal purposes in the town of Bombay)." He said, the object of the present Bill was to amend the Act passed last year, for appointing Municipal Commissioners and for raising a Fund for Municipal purposes in Bombay, which had been found to be defective in several respects. Provisions had

been introduced into this Bill to amend those defects. Very soon after the passing of the Act, the Justices of Bombay represented to the Government that, by Section VI of the Act, the Governor in Council had power to appoint one Commissioner, who was removeable at his pleasure; and by the succeeding Section of the Act, the two other Commissioners who were to be elected by the Justices were to remain in office for a period of three years, but no power of removal was given. This they complained of, and said that, as the election to the office was triennial, an unfit person might be elected, whom it might be very desirable to get rid of. Some discussion had taken place on this point, and the Government had finally concurred that such power of removal ought to exist, when such should be recommended by the Justices;—provision for this had been made in the present Bill.

The next object of the Bill was to provide for the levy of town duties on bricks and tiles, which were not included in the Schedule of Act XXV of 1858, and which were articles on which, in the opinion of the Municipal Commissioners, such duties ought to be levied.

The Government had also considered it expedient that the Municipal Commissioners should possess a discretionary power of compounding, for a given period, for the payment of a lump sum on articles imported by them, instead of each article being paid for separately. It was found, however, that, without an express enactment, this could not be done; provision to meet the requirement had been made in the Bill now introduced.

It had also been brought to the notice of the Bombay Government, by the Chief Engineer, that the Bill caused the levy of a duty on the importation of timber, the property of Government, and that this timber was almost invariably brought into Bombay for re-exportation, or (when kept) for the purpose of ship-building for the Indian Navy, and ought not to be liable to any duty. It had, consequently, been suggested by the Government, and concurred in by the Commissioners, that power should be given to them to remit the duties on timber and all other articles re-exported or issued from a Government depôt for the Indian Navy, or any other Government purposes.

He (Mr. LeGeyt) would move the first reading of the Bill.

The Bill was read a first time.

AHMEDABAD MAGISTRACY.

MR. LEGEYT moved that the Bill "to empower the Governor of Bombay in Council to appoint a Magistrate for certain districts within the zillah Ahmedabad" be read a third time and passed.

The motion was carried, and the Bill read a third time.

SMALL CAUSE COURTS.

MR. FORBES moved that a communication received by him from the Madras Government be laid upon the table and referred to the Select Committee on the Bill "for the establishment of Courts of Small Causes beyond the local limits of the jurisdiction of the Supreme Courts of Judicature, established by Royal Charter."

Agreed to.

LEASES OF GHATWALEE LANDS (BEERBHOOM).

MR. CURRIE moved that Mr. Ricketts be requested to take the Bill "to empower the holders of Ghatwalee lands in the district of Beerbhoom to grant leases extending beyond the period of their own possession" to the Governor-General for his assent.

Agreed to.

AHMEDABAD MAGISTRACY.

MR. LEGEYT moved that Mr. Ricketts be requested to take the Bill "to empower the Governor of Bombay in Council to appoint a Magistrate for certain districts within the zillah Ahmedabad" to the Governor-General for his assent.

Agreed to.

VILLAGE-WATCHMEN (BENGAL).

MR. RICKETTS gave notice that he would, on Saturday next, move the first reading of a Bill to regulate the appointment, employment, and dismissal of village-watchmen in the territories under the Government of the Lieutenant-Governor of Bengal.

The Council adjourned.

Saturday, March 5, 1859.

PRESENT:

The Hon'ble the Chief Justice, *Vice-President*, in the Chair.

Hon. J. P. Grant,
Hon. Lieut.-Gen. Sir J. Outram,
Hon. H. Ricketts,
Hon. B. Peacock,
P. W. LeGeyt, Esq.,
E. Currie, Esq.,
H. B. Harington, Esq.,
H. Forbes, Esq.,
and
Hon. Sir C. Jackson.

MERCHANT SEAMEN.

THE CLERK presented a Petition (enclosed in a letter from the Governor of the Straits' Settlement) from ship-owners and others interested in the trade of Singapore, praying that the Merchant Seamen's Bill be made applicable to the Ports in that Settlement.

MR. CURRIE said that, if he had rightly apprehended the substance of the Petition, the only points which concerned this Council were the extension of the Act to Singapore and the Straits and the limitation of advances to one month's wages, and those had already been provided for.

OATHS AND AFFIRMATIONS.

THE CLERK presented a Petition from Protestant Missionaries residing in and near Calcutta against the Bill concerning Oaths and Affirmations.

MR. FORBES moved that the Petition be printed.

Agreed to.

EXPORTATION OF PIG LEAD.

THE CLERK reported to the Council that he had received from the Foreign Department a correspondence with the Bombay Government on the subject of prohibiting the exportation of Pig Lead.

MR. PEACOCK moved that the correspondence be printed.

Agreed to.

VILLAGE WATCHMEN (BENGAL).

MR. RICKETTS said he rose, in pursuance of the notice which he had given on Saturday last, to move the first reading of a Bill "to regulate the appointment, employment, and dismissal of Village Watchmen in the Territories under the Government of the Lieutenant-Governor of Bengal," or, as it might more appropriately be styled, a Bill for the better regulation and management of the Rural Police. As he knew that the Council was anxious to proceed with the new Code of Procedure, he would occupy only a few minutes with explanations of the measure. The matter had been fully discussed when Act XX of 1856 was before the Council. It was not necessary for him to tell those acquainted with Bengal politics that the Rural Police had been next to useless. He assured his Honorable friend the Member for Bombay that it was as bad as the Bombay Police was before the reforms commenced in 1853-54; and he could assure the Honorable Member for Madras that it was as bad—no, that was an exaggeration—nearly as bad as the Police of Madras. There was not a word to be found in the dictionary of synonymes having any affinity to opprobrium that had not been applied to the Bengal Police. He (Mr. Ricketts) found the Honorable Member now absent (Mr. Grant) some years ago speaking thus of the Police:—

> "It has always appeared to me that our local Police is the worst feature in our administration. It is neither the Police of the people nor the Police of the Government; it is therefore unpopular, arbitrary, and vexatious, at the same time that it is undisciplined, incapable, and ill-directed."

Mr. Grant had had long experience in Bengal, and no one was more qualified to express an opinion; if there was any one, it was the Lieutenant-Governor of Bengal, who said—

> "No man with property worth two hundred Rupees in his house can lie down to rest at night without the most vivid and well-founded fear that he and his family will be awakened in the night by the assault of merciless plunderers, who only omit to murder as well as to rob when the terror of their attacks has prevented all attempt at resistance."

Going back for a few years, they would find the opinion of a Committee appointed in 1837 to report upon the subject. They wrote—

> "It is even a question whether an order issued throughout the country to apprehend

and confine the chowkeydars would not do more to put a stop to theft and robbery than any other measure that could be adopted."

Act XX of 1856, as originally framed, embraced the Village Police as well as the watchmen of Towns, but the principle propounded in the Draft was to make the landowners answerable for the pay of the Village Police, and it being feared that that principle could not be maintained, the Village Watch were excluded from the Bill. In a Minute on the subject his Honorable and learned friend opposite (Mr. Peacock) wrote—

"I would not exempt the owners or occupiers of land from any liability to contribute to the support of Village Watchmen which may attach to them according to the custom and usage which have prevailed in each village.

"The custom to maintain watchmen seems to have existed from the earliest times in every village. I cannot think that it could ever have been intended that the maintenance of that class of officers should fall into disuse, or be considered as merely optional with those who have always contributed to their support. Where lands have been appropriated to their support, they should continue to be so. When the watchmen have been paid by the contributions from the village community, either in money or grain, such contributions should be considered obligatory. I find that the continuance of the Village Watchmen is contemplated by the Regulations passed at the time of the permanent settlement, although it does not appear that any provision was at that time expressly made for their support. By Regulation XXII of 1793, Section XIII, all Pykes, &c., and other descriptions of Village Watchmen are declared subject to the orders of the Darogah. He is to keep a register of their names, and upon the death or removal of any of them, the landholders or others to whom the filling up of the vacancies shall belong, shall send to the Darogah the names of the persons whom they may appoint."

He (Mr. Ricketts) had made this passage of his Honorable friend's Minute the foundation of his proposals; he sought to impose no new taxation, neither had he any wish to shift the responsibility of appointing Village Chowkeydars; all that he aimed at was to fix and systematize existing privileges and existing liabilities.

He (Mr. Ricketts) would at once prefer to dismiss all the Chowkeydars of Bengal, and see how we could do without them, if he thought reform was impracticable; but he believed that a certain degree of reform was practicable. When the attempt was made before and abandoned, at the request of Lord Dalhousie, an enquiry was instituted into the number of Chowkeydars, and the amount and mode of their payment, through the Magistrates of Districts, and it was found that there were 1,64,877 Chowkeydars in 1,59,309 villages containing 68,28,866 houses, being 1 Chowkeydar to 41 houses. The sum paid to these Chowkeydars was estimated at Rupees 59,35,572, including presents, or three Rupees per mensem each.

Now, the whole of this large sum was much worse than thrown away; so many men could not be necessary; he (Mr. Ricketts) thought that one-half well paid and well managed would be sufficient; he desired to see carried out the views of the Lieutenant-Governor of Bengal, as expressed in his Minute written after the receipt of the returns. In that Minute the Lieutenant-Governor wrote—

"What is however necessary to secure the old institution of a Village Watch from falling into utter desuetude, and for keeping it in a state of vigor sufficient for our present purposes, but doubtless to be further improved and reformed hereafter, is a law which shall enable a Magistrate, on finding a village without a Chowkeydar or a Chowkeydar without wages, to make a summary inquiry, and, according to the nature of the case, either to cause the nomination of a fit Chowkeydar by the person or persons to whom the nomination may be proved by custom and usage to belong, or to cause payment of his wages at the rate found customary by the person or persons on whom the customary liability to pay such wages may be found to fall. Any very precise provisions would, I humbly think, be out of place at present."

He (Mr. Ricketts) wished to carry out these views of the Lieutenant-Governor, and he thought that was all that could be attempted at present with any prospect of success. He would now, with the permission of the Council, read those Sections of the Bill upon which he thought it was probable that discussion might arise. He would call attention to Section V, which provided that—

"If the sum hitherto paid by the inhabitants of a watchman's beat does not amount to three Rupees per mensem, the Magistrate may cause the parties responsible to make good that sum, or may amalgamate such watchman's beat with the beat of another watchman or other watchmen, and make the pay

of the watchman dispensed with payable to such other watchman or to such other watchmen in such portions as may appear proper."

He anticipated some opposition to this principle out of doors, inasmuch as it took the matter out of the hands of the people, and placed additional power in the hands of the Magistrate, but he believed the measure to be necessary. It might be that the inhabitants of the beat were unable to pay more; if they were, he thought it would be better to have no watchman than to have one so badly paid that he could not live. Under the Bill a Chowkeydar would either be dispensed with, or have as much as would enable him to live honestly.

Sections VI, VII, and VIII provided that, when the watchmen were paid by the inhabitants, and not by landowners or by zemindars, a punchayet of five respectable persons should be formed to determine the cess necessary for the payment of the watchmen. This was doubtless conferring great power on the punchayet, as they would have to assess themselves with reference to their ability to pay, but he thought the power would be better in their hands than in those of any other party. The working might at first be attended with considerable trouble, but it was in his opinion, on the whole, the best arrangement that could be made. His Honorable friend (the Clerk Assistant of the Council), than whom no man knew more of the feelings, and wishes, and wants, and requirements of his countrymen, entirely agreed with him upon this subject.

The other Sections to which he would allude were Nos. IX and X, which gave power to the Magistrate to dispense with the appointment of one or more watchmen in certain cases, and to cause the money leviable to be paid to another watchman, with a view to the increase of his pay and to his appointment as head watchman; and provided for the formation of watch-posts and for making the head watchman answerable for the peace of all the villages or beats included in the tract of country placed under him. These measures probably would be opposed, but it was no use to have an army without officers to rule and manage it; he thought it advisable to enable the Magistrate to appropriate part of the fund available to the remuneration of a new class of superior watchmen, who would be responsible for the beats placed under them. It was well known that in Bengal thieves very seldom went alone; they were always in parties of two or three, and no Bengali watchman would meet three thieves: to be useful they must be employed two or three together.

He (Mr. Ricketts) would not detain the Council with further observations; it was universally admitted that reform was needed, and that any change must be for the better; that nothing could be worse than the existing state of things He was aware that, in undertaking this reform, he had imposed on himself a task of no little difficulty, but with the long experience he had had in Bengal, he ought to be able to accomplish it: he felt confident of having the cordial assistance of all his Honorable friends in the Council, and with their aid he hoped to be instrumental to the removal of this blot in the administration. He begged to move the first reading of the Bill.

The Bill was read a first time.

CIVIL PROCEDURE.

On the Order of the Day being read for the re-committal of the Bill "for simplifying the Procedure of the Courts of Civil Judicature not established by Royal Charter," the Council resolved itself into a Committee for the further consideration of the Bill.

Mr. CURRIE said that it fell to him to move the first amendment; and before doing so he would take the opportunity of saying generally that, since the publication of the amended Bill several communications had been received from the Sudder Courts and from Judicial Officers, and the Members of the late Select Committee on the Bill had held more than one meeting for the purpose of giving the suggestions contained in those communications a careful consideration. Some of the suggestions it had been thought advisable to adopt, others could not be entertained with advantage, and upon the merits of others there was some difference of opinion in the Select Committee, upon which the Council would decide. All the alterations which had been proposed had been carefully considered.

He had to move the omission of Section 2, and the substitution of the two following Sections :—

"The Civil Court shall not take cognizance of any suit brought in a cause of action which shall have been heard and determined by a Court of competent jurisdiction in a former suit between the same parties or between parties under whom they claim.

"The judgments of the Civil Court shall not be subject to revision otherwise than by those Courts, under the rules contained in this Act applicable to reviews of judgment, and by the constituted Courts of Appellate Jurisdiction."

The use of the word "suit" in Section 2, as it stood, was not quite accurate; and it was thought that the provisions of Section 11 would stand better in immediate connection with Section 2.

Agreed to.

MR. HARINGTON moved the introduction of the following three new Sections after Section 5 :—

"Every suit shall include the whole of the claim arising out of the cause of action, but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court. If a plaintiff relinquish or omit to sue for any portion of his claim, a suit for the portion so relinquished or omitted, shall not afterwards be entertained.

"Causes of action by and against the same parties, and cognizable by the same Court, may be joined in the same suit, provided the entire claim in respect of the amount or value of the property in suit do not exceed the jurisdiction of such Court.

"If two or more causes of action be joined in one suit, and the Court shall be of opinion that they cannot conveniently be tried together, the Court may, on the presentation of the plaint, or at any stage of the suit, call upon the plaintiff to elect upon which cause of action he will go to trial, and may strike out the remaining cause or causes of action upon such terms as it may think proper; but the plaintiff shall not be thereby debarred from bringing a separate suit for the portion of the claim so struck out."

He explained that the object of the Sections which he wished to introduce was to prevent the multiplication of suits between the same parties. This was proposed to be effected, *first*, by requiring that every suit should include the whole of the claim arising out of the cause of action; and, *secondly*, by allowing two or more causes of action by and against the same parties and cognizable by the same Court to be joined in one suit, provided that the amount or value in dispute did not exceed the jurisdiction of the Court in which the action was brought, and provided also that there was no such dissimilarity in the character of the different causes of action as would render their being united in a single suit objectionable or improper. When a cause of action accrued upon a bond, and the sum claimed consisted partly of principal and partly of interest, he thought that the plaintiff should be compelled to institute one suit for both items, and that he should not be allowed to sue first for the principal and afterwards for the interest of the debt; and that, if, for the purpose of rendering his suit cognizable by a Court of limited jurisdiction, the plaintiff should bring a suit for the principal only, he should be understood to have abandoned the rest of his claim, and a suit for the interest of the debt should not afterwards be entertained. Upon the same principle, there seemed no reason why a single suit should not be allowed to recover the amount of several bonds, where the parties to the contract were the same, provided that the sum claimed under the several bonds was cognizable by the Court in which the suit was brought. There was nothing in the Code as now drawn prohibitory of an action of this nature, but in a decision recently passed by the Privy Council, a doubt was expressed as to whether the practice of the Courts in this country would admit of such a suit being heard, and it was desirable to prevent any such doubt from arising hereafter, by introducing a declaratory rule. At the same time it would be obviously improper to allow causes of action of all kinds, however dissimilar in character, to be united in a single suit; for instance, a party should not be allowed to combine in one action a claim for possession of a house under a deed of sale, and a claim to recover damages for defamation of character; and, accordingly, the last of the Sections proposed by him gave the Court power, when it considered that two or more causes of action had been improperly joined together, to call upon the plaintiff to elect on which of them he would go to trial, and to strike out the remaining cause or cause of action.

The first and second Sections proposed having been put by the Chairman, they were agreed to.

Upon the Chairman reading the proposed Section No 3—

MR. PEACOCK remarked that he thought it would be better that the Court should have the power of ordering separate trials, rather than that the plaintiff should elect upon which cause of action he would proceed. He would therefore move that all the words of the proposed Section after the word "may" in the 4th line be struck out, and that the following words be substituted:—"order separate trials to be had."

MR. CURRIE said that he would not oppose the motion, although the subject had been well considered in the Select Committee, and it was thought that it was better to put the Section in the form in which it stood. He thought that there ought to be as many plaints as trials and as many corresponding entries in the register; such a course would be far more simple, and would not be unduly hard upon the suitor who had joined incongruous causes of action in the same suit.

THE CHAIRMAN said, that he thought it would be advisable to avoid punishing the plaintiff and defendant by imposing the necessity of different stamps, which would be the case if of necessity separate actions had to be brought; it had been suggested to him that the first of the new Sections would operate very inconveniently, if, as was one construction which might be put upon it, it compelled the person who brought an action for the recovery of land to institute his claim for wassilant in the same action and to pay stamp duty calculated on both claims. He was not prepared to say that these two claims did fall legitimately within the first Section as constituting the whole of the claim arising out of the cause of action. But he understood that that was the view of the Honorable Member for the North-Western Provinces. He (the Chairman) should vote for the amendment of his Honorable and learned friend.

MR. HARINGTON said, there could be no doubt that, under the Section referred to by the Honorable and learned Chairman, if a party suing for land claimed mesne profits also for a period antecedent to the institution of his action, he would be required to include their amount in the suit for the land on which they had accrued, otherwise the claim for mesne profits would be barred, and he thought that this was reasonable and proper. The title to the mesne profits would, ordinarily, in a case of this kind, be derived from the title to the land on which they were claimed, and as by establishing his right to the one the plaintiff would in most instances establish his right to the other also, there seemed no reason why he should not be obliged to bring one suit for both claims. The Section proposed by him would introduce no new rule of practice. So far back as the year 1839 the Sudder Courts at Calcutta and Agra had issued a circular, in which they pointed out that, when a party claimed not only to be placed in possession of an estate, but also to recover a sum of money as mesne profits, which had accrued prior to his coming into Court to establish his right to the estate, he should be required to declare the specific sum to which he considered himself entitled on this account according to the nearest estimate, and having made the entire claim the subject of a single action, should value his suit accordingly. The Calcutta Sudder Court had certainly since seen reason to relax the rule, but in so far as his own experience went, it had worked well in practice, and he should regret its omission from the new Code. No doubt the enquiry into the amount of mesne profits would often occupy a considerable time, and the proofs required to substantiate their amount would not infrequently be different from those on which the claim to the land rested; but in order that the decision of the suit might not be delayed on this account, a Section had been introduced into the Code, which gave the Courts power, when the amount of mesne profits was disputed, to pass a decree for the land, and to reserve the enquiry into the amount of mesne profits for the execution of the decree. With regard to the amendment proposed by the Honorable and learned Member of Council on his left (Mr. Peacock), he would only say that he saw no objection to it, and he was quite willing that it should be adopted.

SIR CHARLES JACKSON saw no objection to the amendment of his Honorable and learned friend (Mr. Peacock), provided that the judgment in each case be kept perfectly distinct, and the proceedings divided in every subsequent stage, as it was probable that one record might be required to be produced apart from the other.

The amendment was carried, and the Section as amended agreed to.

THE CHAIRMAN proposed the introduction of the following new Section :—

"A claim for the recovery of land, and a claim for the mesne profits of such land, shall be deemed to be distinct causes of action within the meaning of the two last preceding Sections."

He said, if the Section was carried, the choice, of either selecting one cause of action or joining more than one, as the case might be, would rest with the Judge, whilst at the same time the plaintiff would be under no obligation to include both : if more convenient, however, that both should be tried together, such could be done.

MR. HARINGTON objected to the introduction of the Section proposed by the Honorable and learned Chairman, and should vote against the motion. He had already given his reasons for considering that both claims, that is the claim for the land and the claim for mesne profits which had accrued on the land prior to the date of suit, should form the subject of a single action, and he would not now occupy the time of the Committee with any further remarks on the subject.

MR. PEACOCK thought, that it would be very convenient to allow both to be so included. By the Section proposed the plaintiff would have such power, although he would not be compelled so to do.

MR. CURRIE was opposed to the introduction of the Section. If the title to the land and the right to mesne profits were regarded as distinct causes of action, the title might be tried in an inferior Court, and the claim to mesne profits in a higher one; for it was to be recollected that land was valued according to its jumma, and not according to its actual value.

The Committee then divided—

Ayes 5.	*Noes* 3.
Mr. LeGeyt.	Mr. Forbes.
Mr. Peacock.	Mr. Harington.
Mr. Ricketts.	Mr. Currie.
Mr. Grant.	
The Chairman.	

So the proposed Section was agreed to.

Upon the Motion of Mr. Currie Section 11 was omitted.

MR. FORBES moved the introduction of the following new Section after Section 14 :—

"When a pleader has been duly appointed under the last preceding Section, the Court, if it be satisfied that such pleader is for some sufficient cause unable to attend personally to make any such application or appearance as aforesaid, may allow him to appoint any other pleader of the Court to make the application or to appear (as the case may be) in his absence."

He said that such a privilege as he proposed was allowed in England and in the Courts in India established by Royal Charter. He believed that it was thought by some that under such a rule pleaders in this country would frequently neglect the cases of their poorer clients, but he thought that if any such evil arose by the adoption of the proposed course, it would cure itself, as a pleader's livelihood depended on his success, and if he was systematically to neglect the interests of his clients, they would soon leave him. It was not right that the time of three highly-paid Judges should be wasted by having to wait for the plaintiff's Attorney or Pleader, who might have three different cases to attend to in the Sudder Court, in the 24-Pergunnahs, and in the Magistrate's Court.

MR. HARINGTON opposed the introduction of the Section; he thought that no Pleader should be allowed to delegate his duties to another Pleader without the knowledge and consent of his client. The character of the English Bar was very different from that of the Native Bar, particularly in the Courts of the Uncovenanted Judges, and he was not prepared to say that what might be quite safe and proper in the case of the English Barrister would be equally safe and proper in the case of

the Native Pleader He thought the Section proposed would be as unpopular as it was uncalled for

The Committee then divided on the question —

Ayes 2	*Noes* 6
Mr Forbes.	Mr Harington
Mr Currie	Mr LeGeyt
	Mr Peacock
	Mr Ricketts
	Mr Grant
	The Chairman

The Section proposed was consequently negatived

MR CURRIE moved the introduction of the following new Section after Section 19 —

"If any plaint, written statement, or declaration in writing required by this Act to be verified, shall contain any averment which the person making the verification shall know or believe to be false, or shall not know or believe to be true, such person shall be subject to punishment according to the provision of the law for the time being in force for the punishment of giving or fabricating false evidence"

He remarked that the Section which he proposed to introduce provided a penalty for false statements Such penalty was provided in the Penal Code, but as it was likely that this Bill would come into operation before the Penal Code, he thought it would be better to make such a provision

The Section was agreed to

MR CURRIE moved the insertion of the word "ordinarily" after the word "party" in the first line of Section 29

Agreed to

MR HARINGTON moved the omission of the words "reject the plaint" at the end of the same Section, and the substitution of the words "return the plaint to the plaintiff" He remarked there was no reason why the omission to furnish the security required under this Section should necessarily be followed by the rejection of the plaint, which was a very heavy penalty, and he thought that the Court should be allowed in such cases to return the plaint, leaving the plaintiff to file it afresh at some future period with the required security.

The motion was carried, and the Section as amended agreed to

MR LEGEYT moved the introduction of the following new Section after Section 29 —

"If in any stage of a suit it shall appear to the Court that the plaintiff (being sole plaintiff) is a person residing out of the British territories in India, the Court may order him, within a time to be fixed by such order, to furnish security for the payment of all costs incurred and to be incurred by the defendant in the suit In the event of such security not being furnished within the time so fixed, the Court shall pass judgment against the plaintiff by default"

After some discussion the Section was agreed to

MR HARINGTON moved the addition of the following words to Section 30. —

"The rejection of a plaint on any of the grounds mentioned in Sections 24 and 26 of this Chapter shall not preclude a plaintiff from presenting a fresh plaint in respect of the same cause of action"

He said it had been suggested that, unless these words were added to the Section, the Courts might consider themselves to be debarred from admitting a fresh action where a plaint had been rejected under either of the two Sections mentioned, which was certainly not intended The case would be different if the rejection took place on one or other of the grounds specified in Section 27 In such case the plaintiff should not be allowed to institute a fresh action, though, if dissatisfied with the order of rejection, he would be at liberty to appeal from it

Agreed to

MR HARINGTON moved the addition of the following words to Section 35 —

"The Court shall determine at the time of issuing the summons whether it shall be for the settlement of issues only or for the final disposal of the suit, and the summons shall contain a direction accordingly."

He remarked that the Code, as originally prepared in England, allowed the plaintiff to elect whether the summons to the defendant should be for the first hearing and settlement of issues only, or for the final disposal of the case It appeared, however, to the Select Committee on the Bill that the power to discriminate between the two classes of

cases would not be exercised with any beneficial results by parties instituting suits under the Code; that in practice almost every plaintiff would endeavor to obtain a summons for a final disposal of the case; and that defendants generally, rather than risk the loss of their suits or the costs of adjournments, would attend prepared for a final hearing when required by the summons to do so, whatever might be the character of the suit. It further appeared to the Select Committee that the special directions which must be endorsed on the summons to the defendant, in the event of the Section, as prepared by Her Majesty's Commissioners, being retained, would frequently be misapprehended, and that, to quote the words of the Report, "by misrepresentations of their effect to ignorant defendants, they might often be perverted for mischievous purposes." The Section was accordingly altered, and one general rule was introduced for all cases. But it had been objected to the Section as altered that it would prevent any disputed case, however simple in its character, from being finally determined at the first hearing. There was some force in this objection, and as it was desirable to enable the Courts, as far as possible, to dispose of cases at a single hearing, he was anxious to add to this Section the words of which he had given notice. The Court would generally be able to form a tolerably correct opinion from the particulars required to be given in the plaint, whether the case was one which would admit of being disposed of at the first hearing or not, and it would issue its summons accordingly. The distance at which the parties resided from the Court would also be taken into consideration. There seemed no reason to apprehend that the Courts would abuse the power proposed to be conferred upon them, or that they would exercise it otherwise than for the benefit of the parties. In making the present motion, he had particularly in view the different classes of suits which would be cognizable by Courts of Small Causes under the Bill introduced by him.

Agreed to.

MR. LEGEYT moved that the following words be added to Section 36 :—

"Unless he be resident within the limits of the jurisdiction of the Court."

Agreed to.

MR. CURRIE moved the substitution of the words "contained in the Schedule B hereunto annexed" for the words "B given in the Appendix" in the 2nd line of Section 38.

Agreed to.

MR. HARINGTON moved that the words "any order made by the Court under the provisions of this Section shall be open to appeal by the defendant" be added to Section 70.

He said, the Sudder Courts at Calcutta and Agra had strongly recommended that the orders passed for the arrest of a defendant or for the attachment of his property on mesne process, or for the issue of an injunction *pendente lite*, should be open to appeal, and it was in consequence of this recommendation that it was proposed to add to this Section and to Sections 79 and 87 the words of which he had given notice. He might add that his own experience confirmed what had been stated by the Sudder Courts just mentioned, though when the Sections were considered in Committee it was hoped that the appeal, now proposed to be given, might be dispensed with. It would be observed that it was not intended to confer any right of appeal upon the plaintiff, but to restrict the exercise of that right to the defendant.

After some discussion the amendment was agreed to.

MR. CURRIE moved the substitution of the word "and" instead of the word "or" in the 6th line of Section 67.

Agreed to.

MR. HARINGTON moved the substitution of the words "if judgment be given against the defendant until the execution of the decree, if the Court shall so order" for the words "until the execution of any decree that may be passed against him in the suit" at the end of Section 72.

He said, one of the Judges of the Sudder Court at Bombay had remarked as follows on the Sections which related to the arrest of a defendant, or to the attachment of his property on mesne process :—

"Provision ought to be made, declaring how long the defendant or his property may be detained to enable the plaintiff to obtain execution; they should not be released the

moment the decree is passed, but they need not be long detained, for by this proposed Code execution can be had at once. It need not, as under the present law, be delayed for ten days; that provision may have been the reason why no provision was made in our Code for the release of the defendant or his property, when sequestered before judgment, but it is a defect that should now be repaired."

He thought that the words proposed to be substituted for the last two lines of the Section would make sufficient provision for the release of a defendant arrested on mesne process, while as regarded any property attached *pendente lite*, if judgment went against the plaintiff, the attachment would cease and determine from the date of the judgment, but if judgment passed for the plaintiff, the defendant could always obtain an order for the withdrawal of the attachment, by paying the amount of the judgment into Court.

Agreed to.

MR. HARINGTON moved the addition of the following words at the end of Section 79 :—

"Any order for the attachment of property under the preceding Section shall be open to appeal by the defendant."

Agreed to.

MR. CURRIE moved the insertion of the words "or a tenure liable to summary sale under the provisions of Regulation VIII. 1819 of the Bengal Code" after the word "Government" in the 2nd line of Section 85.

Agreed to

MR. CURRIE moved the insertion of the words "or tenure" after the word "lands" in the 4th line of the Section.

Agreed to.

MR. CURRIE moved the insertion of the words "or the rent due to the proprietor of the estate as the case may be" after the word "revenue" in the 5th line of the Section.

Agreed to.

MR. CURRIE moved the insertion of the words "or rent" after the word "revenue" in the 8th line of the Section.

Agreed to.

MR. CURRIE moved the insertion of the words "or tenure" after the word "lands" in the 11th line of the Section.

Mr. Harington

Agreed to.

The motions were carried, and the Section as amended was agreed to.

MR. HARINGTON moved the introduction of the following new Section after Section 87 :—

"Any order made under either of the last two preceding Sections shall be open to appeal by the defendant."

Agreed to.

MR. CURRIE moved the addition of the following words to Section 107 :—

"When judgment is passed against a plaintiff by default, he shall be precluded from bringing a fresh suit in respect of the same cause of action."

After some conversation the Motion was agreed to.

In consequence of some remarks made in the conversation on the previous Motion—

MR. LEGEYT moved the addition of the following words to the new Section after Section 29 :—

"Unless he be permitted to withdraw from the suit under the provisions of Section 90."

Agreed to.

Upon Section 113 having been read by the Chairman—

MR. RICKETTS remarked, that he had a few words to say with regard to dispensing with written statements. The opinion of the Sudder Court was directly opposed to such a course, and he (Mr. Ricketts) had learned from the Judges themselves, that their letter to the Council by no means sufficiently expressed their feelings on the subject. All seven Judges were agreed in the necessity of written proceedings.

(Mr. Ricketts here read a statement from the Sudder Court.)

THE CHAIRMAN said that the question was certainly most important, and he thought that it would be better to print and circulate any proposed amendments, which could be considered on the recommittal of the Bill next Saturday.

MR. PEACOCK agreed with the Honorable and learned Chairman, that it would be better to postpone the question and have it fully discussed, so as

to hear any arguments which might be adduced on either side.

MR. CURRIE moved the addition of the following words to Section 118:—

"The substance of the examination shall be reduced to writing, and form part of the record."

Agreed to.

MR. HARINGTON moved the substitution of the word "evidence" for the word "proof" in the 6th and 10th lines of Section 138.

He said, that a doubt had been expressed whether the word "proof," as used in this Section, would be understood as including parole as well as documentary evidence; and as in cases in which the summons to the defendant might be for the final disposal of the suit at the first hearing, the parties would be required, on the day appointed for that hearing, to produce their witnesses, as well as any documents on which they intend to rely, he thought it might be advisable to substitute the word "evidence" for the word "proof" to meet the objection which had been taken to the Section as it now stood.

Agreed to.

MR. HARINGTON moved the insertion of the words "whether the summons shall have been issued for the settlement of issues only or for the final disposal of the suit" after the word "accordingly" in the 13th line of the Section.

Agreed to.

MR. HARINGTON moved the addition of the following proviso:—

"Provided that, if the summons shall have been issued for the final disposal of the suit, and either party shall fail without sufficient cause to produce the evidence on which he relies, the Court may at once give judgment."

The Motion was carried, and the Section as amended was agreed to.

MR. PEACOCK moved the insertion of the words "who is examined" after the word "party" in the 7th line of Section 118.

The Motion was carried, and the Section as amended agreed to.

MR. HARINGTON proposed the omission of the words "issues have been recorded" in lines 2 and 3 of Section 142, and the substitution of the following:—

"Issue of the summons to the defendant if the summons be for the final disposal of the suit, or after the issues have been recorded if the summons to the defendant be for the settlement of issues only."

Agreed to.

MR. CURRIE moved the insertion of the words "or any other official papers" after the word "case" in the 7th line of Section 131.

Agreed to.

MR. CURRIE moved the substitution of the word "papers" for the words "any part of it" in the 9th line of the Section.

Agreed to.

MR. PEACOCK proposed the addition of a proviso to the Section, to show that State documents should not be deemed to be included in the alteration made by the Honorable Member for Bengal.

After some conversation the consideration of the question was postponed; and the Section for the present was agreed to.

MR. FORBES proposed the omission of all the words after the word "interest" in the 6th line of Section 187.

Agreed to.

MR. LEGEYT moved the addition of the following proviso to Section 194:—

"Provided that, when the decree is against Government or against any officer acting on behalf of Government, the Court shall not proceed by attachment or imprisonment, but if the officer whose duty it is to satisfy the decree, neglect or refuse to satisfy the decree, the Court shall report the case through the Sudder Court for the orders of Government."

After some discussion the Motion was by leave withdrawn, and Mr. Peacock moved the addition of the following words to the Section:—

"When the decree is against Government, or against any officer acting on behalf of Government, if the officer whose duty it is to satisfy the decree neglect or refuse to satisfy the same, the Court shall report the case through the Sudder Court for the orders of Government, and execution shall not issue on the decree, unless the same shall remain

unsatisfied for the space of three months from the date of such report."

Agreed to.

MR. FORBES moved the introduction of the following new Section after Section 198 :—

"All monies payable under a decree shall be paid into the Court whose duty it is to execute the decree, unless such Court or the Court which passed the decree shall otherwise direct. No adjustment of a decree in part or in whole shall be recognized by the Court unless such adjustment be made through the Court, or be certified to the Court by the person in whose favor the decree has been made, or to whom it has been transferred."

Agreed to.

MR. HARINGTON moved the substitution of the following new Section for Section 235 :—

"When the property attached shall consist of debts due to the party who may be answerable for the amount of the decree, or of any lands, houses, or other immoveable property, it shall be competent to the Court to appoint a manager of the said property, with power to sue for the debts, and to collect the rents or other receipts and profits of the land or other immoveable property, and to execute such deeds or instruments in writing as may be necessary for the purpose, and to pay and apply such rents, profits, or receipts towards the payment of the amount of the decree and costs; or when the property attached shall consist of land, if the judgment debtor can satisfy the Court that there is reasonable ground to believe that the amount of the judgment may be raised by the mortgage of the land, or by letting it on lease, or by disposing by private sale of a portion of the land, or of any other property belonging to the judgment debtor, it shall be competent to the Court, on the application of the judgment debtor, to postpone the sale for such period as it may think proper to enable the judgment debtor to raise the amount. In any case in which a manager shall be appointed under this Section, such manager shall be bound to render due and proper accounts of his receipts and disbursements from time to time as the Court may direct."

He said, the former part of the new Section was the same as the Section proposed to be omitted; the latter part of the Section was taken with some slight modifications from Act VI of 1855, Section 2, which applied to the Supreme Courts of Judicature alone. The addition proposed by him was intended to meet to some extent the objections entertained by many persons to the sale of land in satisfaction of money decrees. He would not now go into the very important question as to whether such sales should or should not be allowed. He would, however, observe, that the large transfers of landed property which had taken place in this country were not, owing solely, or indeed, he might say, mainly to the action of the Civil Courts. He held in his hand a statement which had been prepared by the Sudder Board of Revenue, showing the number of acres of land that had been sold in the year to which the statement related. From this it appeared that in the Delhi Division 22,364 acres were sold by private sale, and 31,977 acres for arrears of Government revenue, and only 5,589 acres in execution of decrees of Court; that in the Meerut Division 18,884 acres were disposed of privately, and 140 acres for arrears of Government revenue, to 8,480 acres in execution of decrees of Court; that in the Rohilcund Division, in which sales of land by order of the Civil Courts were stated to have been unusually numerous, 38,326 acres were sold privately, and 5,170 acres for arrears of Government revenue, to 12,451 acres in execution of decrees of Court; that in the Agra Division 16,284 acres were sold privately, and 178 for arrears of Government revenue, to 8,878 acres in execution of decrees of Court; that in the Allahabad Division 59,440 acres were sold privately, and no less than 65,786 acres for arrears of Government revenue, to 27,498 acres in execution of decrees of Court; and that in the Benares Division 97,909 acres were disposed of privately, and 1,482 for arrears of Government revenue, to 51,619 acres in execution of decrees of Court. The total number of acres which changed hands during the period referred to was 472,455, of which less than one-fourth was disposed of by order of the Civil Courts. From this it was evident that, if the sale of lands in execution of decrees of Court were prohibited altogether, alienation would still go on. Even if it were desirable, he believed it would be quite impossible to keep the land in the hands of the old proprietors—here as elsewhere it would gradually pass into the possession of the monied men.

The Motion was carried, and the Section agreed to.

MR. CURRIE proposed the introduction of the following new Section after Section 235 :—

"When in any district where land paying revenue to Government is ordinarily sold by the Collector, as provided in Section 239, the property attached shall consist of any such land or of a share in any such land, if the Collector shall represent to the Court that the public sale of the land or share is objectionable, and that satisfaction of the decree may be made within a reasonable period by a temporary alienation of the land or share, the Court may authorize the Collector to make provision for such satisfaction in the manner recommended by the Collector, instead of proceeding to a public sale of the land or share."

He remarked that the proposed Section went a step further than the last new Section. The Judge of Cawnpore, the Commissioner of Allahabad, and the Agra Sudder Court objected to the indiscriminate sale of land. Mr. Muir objected to any sale of land at all under civil process. He (Mr. Currie) would not go so far as Mr. Muir. He agreed generally in what had been said on the subject by the Honorable Member for the North-Western Provinces. But even if it were admitted that the transfer of the land from the hands of the old proprietors was an unmitigated evil, still in the existing state of things that would be no sufficient reason for a general stoppage of sales.

Something, however, was to be conceded to opinions so strongly expressed and urged by the authorities he had named. The new Section which he proposed would enable the revenue authorities to interfere in behalf of old proprietors in all cases in which such interference could be beneficially exercised.

MR. HARINGTON said, he did not object to the introduction of the Section proposed by the Honorable Member for Bengal, but he thought that some provision should be made to secure the decree-holder from loss in the event of the property being sold for arrears of Government Revenue during its temporary alienation. Under Section X, Act I of 1841, the right of Government to hold the entire body of proprietors and the entire estate responsible for the amount of the whole revenue was expressly reserved, so that, whatever happened, the Government could sustain no loss. If the judgment creditor was not to be allowed to bring the real property of his judgment debtor to sale until it could be seen whether the amount of the judgment might not be realized from the profits of the property, he should not be exposed to the risk of losing the property altogether by the intervention of a Government sale.

After some discussion, MR. GRANT moved the insertion of the words "on security for the amount of the decree, or for the value of such land or share being given" after the words "authorize the Collector."

The Motion was carried, and the Section as amended was agreed to.

MR. HARINGTON moved the omission of the words "and shall direct the decree to be executed" after the word claim in the 38th line of Section 237. He said, the words proposed to be omitted were clearly out of place; the decree must be in course of execution, otherwise the property to which the claim related would not have been seized, and in the event of the claim being disallowed, the order passed would be for the sale of the property.

Agreed to.

MR. HARINGTON moved the omission of the word "thereof" at the end of the Section, and the substitution of the words "of the order." He said, Mr. Gubbins, the Commissioner of the Benares Division, observed on this part of the Section, that the word "thereof" might mean anything, and he proposed the substitution of the words "of the order." He did not think that if the word "thereof" were retained, any doubts could arise as to what previous word in the sentence it referred to, but he had no objection to the substitution of the words proposed by Mr. Gubbins.

The motion was carried, and the Section as amended was agreed to.

MR. LEGEYT moved the insertion of the following words after the word "districts" in the 43rd line of Section 240 :—

"The proclamation shall also declare that the sale extends only to the right, title, and interest of the defendant in the property specified therein."

Agreed to.

MR. LEGEYT moved the omission of Section 242.

Agreed to.

Upon the consideration of Section 246—

MR. FORBES, in accordance with the opinion and wish of the Sudder Court of Madras, moved that Section 247 be added to Section 246, so as to form one Section.

Agreed to.

MR. HARINGTON moved the substitution of the word "year" for the word "month" in the 19th line of Section 262. He said, the substitution of the word "year" for "month" was proposed in consequence of a remark of the Judge of Mirzapore, Mr. Lean, who observed that he could not understand why a year was allowed for a regular suit to be filed to contest the summary order passed on a claim to entirety of property made before the sale, and why a month only was allowed for the institution of such suit to contest the summary orders passed on claims made after the sale. He agreed with Mr. Lean that the same period should be allowed in both cases, and he did not think a year too long.

The Motion was carried, and the Section as amended was agreed to.

MR. HARINGTON moved the addition of the following words to Section 325 :—

"If the appeal lie to the Sudder Court, it shall be heard and determined by a Court consisting of three or more Judges of that Court."

He said, the Section as it now stood would admit of a single Judge of the Sudder Court disposing finally of an appeal, which he thought was very objectionable.

The Motion was carried, and the Section as amended was agreed to.

MR. HARINGTON moved the substitution of the words "period for preferring the appeal and the procedure thereon" for the word "procedure" in the 2nd line of Section 359. He said, the addition proposed to be made to this Section was also intended to supply an omission in the Code as now drawn.

The Motion was carried, and the Section as amended was agreed to.

MR. CURRIE moved the substitution of the word "district" for the word "zillah" in the 5th line of Section 361.

The Motion was carried, and the Section as amended was agreed to.

MR. HARINGTON moved that the following words be prefixed to Section 365 :—

"Unless otherwise provided by any law for the time being in force."

He said, under the Bill for the establishment of Courts of Small Causes brought in by him, it was not proposed to allow a special appeal in any case; the words, therefore, of which he had moved the insertion were necessary.

The Motion was carried, and the Section as amended was agreed to.

MR. CURRIE (in the absence of Mr. LeGeyt) moved the substitution of the following new Section for Section 373 :—

"When an application for a review of judgment is granted, a note thereof shall be made in the register of suits or appeals (as the case may be), and the Court shall give such order in regard to the rehearing of the suit as it may deem proper in the circumstances of the case.

Agreed to.

MR. HARINGTON moved the addition of the following new Section to the Bill :—

"From and after the time when this Act shall come into operation in any part of the British Territories in India, the procedure of the Civil Courts in such part of the said territories shall be regulated by this Act, and except as otherwise provided by this Act, by no other Law or Regulation.

He said it was intended, as soon as this Bill passed into law, to bring in a Bill to repeal all Regulations and Acts of the three Presidencies which would be superseded by the Code, but, in the meantime, the addition to the Code of a Section of the nature proposed by him appeared necessary.

The Section was agreed to.

MR. HARINGTON moved the insertion of the following words after the word "plaintiff" in the 12th line of Schedule B :—

["If the summons be for the final disposal of the suit, this further direction shall be added here; and as the day fixed for your appearance is appointed for the final disposal of the

suit, you must be prepared to produce all your witnesses on that day."]

Agreed to.

The Council having resumed its sitting, the Bill was reported with amendments.

SALES OF LAND IN EXECUTION OF DECREES.

MR. RICKETTS said that, in the course of the preceding debate, mention had been made of the opinion of some of the Officers of the North-Western Provinces respecting the sale of lands.

He was aware that the very mention of the possibility of a change, in a case of this sort, must do harm; and that if it went forth that there was an enquiry pending on the subject, there was hardly a landowner or a money-lender in the country who would not be affected by it. Nevertheless, enquiry appeared to be unavoidable. One of the Officers he alluded to, Mr. Muir, was known to be able and experienced. Two years ago he would never have dreamt of any such change, but he had seen for himself and heard the opinion of others. He now recommended immediate alteration of the law. He wrote:—

"The passing of landed estates into the hands of mere speculators, without local influence or connexion with the soil, was always regarded as a serious disadvantage. It ousted from their ancestral lands those who, by their natural position, could best manage them, and be made instrumental in aiding the administration; and it substituted a set of men who were often unable even to maintain themselves in secure possession, and for all administrative purposes were far less responsible and less useful proprietors. In addition to this, we have now had universal proof that the moment the authority of Government is suspended, the old proprietors re-assert their foregone rights and oust the upstart intruders."

* * * * *

"But, whether regarded by the natives to be right or to be wrong, the practical result of these sales has been equally disastrous. They contributed seriously to the embarrassment of Government, and to the confusion and disorder of the days of anarchy. They proved an eminent source of weakness. This is a fresh argument against the present system, superadded to the evils that were already felt, to call for the adoption of all possible means for checking the frequency of sales and permanent transfers."

* * * * *

"I entirely concur in the principle proposed in the letter of Government indicated at the beginning of this memorandum. For all simple debts I would limit the process of our Courts to the person and personal effects of the debtor; and entirely exempt land from liability in the execution of the decree. Houses, with gardens or other plots of ground attached to them in cities, need not necessarily be classed with landed estates, but might follow the law of personalty."

Mr. Thornhill, another Officer of much experience in the North-Western Provinces, said:—

"There can, I think, be no doubt that the tendency of our system is to oust the old proprietors, and to transfer the land to men who have made their money by trading upon the vices or necessities of their neighbors, and who possess no local connexion or social position, which could give them influence over their tenants."

* * * * *

"I think that the sale of land in satisfaction of decrees of Court might, with advantage, be absolutely prohibited; but if this measure be objected to, at least the same indulgence as is allowed in Clause CLXXXVII might be permitted to those landed proprietors who are threatened with a foreclosure of mortgage."

A third, Mr. Batten, was of the same opinion. He wrote:—

"I trust that, by some wise legislation involving the consideration of decrees non-absolute and payable by instalments, and of the whole question of pre-emption, entail, and tenure, a remedy may soon be provided for the great evil (which, as far as loud native complaint goes, may be called a "crying evil") of the constant transfer of lands from the agricultural population to the money-lending classes, through the operation of our present system, by which the Civil Courts make the soil the security for all money debts. A law of limitation, too, for all British India, reducing by at least half the present period for receiving suits for simple debts, damages, &c., is, in my judgment, urgently required. But I suppose, until further legislation takes place in regard to these important subjects, as also to the subject of Native insolvency in general, the Code of Procedure cannot afford the remedy which is so much desiderated.

"I may, however, add my own evidence, as Special Commissioner and Sessions Judge, that the course of agrarian outrages in these Provinces, which followed the subversion of order by the mutineers, has shown that the right to land by execution of decrees has everywhere been treated by the people with utter contempt, and that for a time the ousted parties took the place of the auction purchasers, not without severe suffering, loss of property, and often death to the latter."

Now these were Officers of great experience and penetration, and the

opinion expressed in another paper, now before the Council in another matter, was confirmatory of their views. He believed that the gentleman he alluded to had now retired from the Service, but he could appeal to the Honorable Member for Bombay for confirmation of his representation, when he said that few men had done more for that Presidency than Captain Wingate, who had planned and superintended the survey which was now going on. He wrote:—

"This miserable struggle between debtor and creditor is thoroughly demoralizing to both. The creditor is made by it a grasping hard-hearted oppressor. The debtor a crouching false-hearted slave. It is disheartening to contemplate, and yet it would be weakness to conceal the fact, that this antagonism of classes and degradation of the people, which is fast spreading over the land, is the work of our laws and our rule. The corruption and impoverishment of the mass of the people for the enriching of a few have already made lamentable advances in some districts, and are in progress in all, and the evil is clearly traceable in my opinion to the enormous power which the law places in the hands of the creditor.

"The facilities which the law affords for the realization of the debt have expanded credit to a most hurtful extent. In addition to the ordinary village bankers, a set of low usurers is fast springing up, by whom small sums are lent, for short periods, at enormous rates of interest, to the very lowest of the population, who have not credit enough to obtain advances from the more respectable of the village bankers. All grades of the people are thus falling under the curse of debt, and should the present course of affairs continue, it must arrive that the greater part of the realized property of the community will be transferred to a small monied class, which will become disproportionately wealthy by the impoverishment of the rest of the people. No greater misfortune could befal any nation than this, by which the many are made miserable in order that the few may be pampered. And yet this is the inevitable tendency of the existing relations between debtor and creditor in our Presidency."

* * * *

"The second remedial measure I have already proposed to Government in a separate Report, No. 296, dated 3rd instant, and it is the following:—

"'The exemption of land or other immovable property from attachment and sale in satisfaction of decrees of Civil Courts, unless the suit specially refer to such land or property, and its attachment ands ale are specified in the decree.

"'The following extracts from the Report just quoted show the grounds of this recommendation:'

"'The compulsory sale of land by civil process in payment of debt not secured upon the land by mortgage or otherwise is, I believe, entirely opposed to Native law and usage throughout India. In our own Presidency the practice is authorized by Regulation, but so incompatible is it with Native ideas, that it has been resorted to to a very limited extent in the districts where our Regulations have been longest in force, while in others, as in the Southern Mahratta Country and the Deccan, it is to this day almost unknown. Throughout these districts, and I believe generally over the Presidency, the cultivators of fully assessed land believe their lands belong to Government, and that they cannot be dispossessed of them unless at the instance of Government. The idea of their lands being subject to sale in satisfaction of a bond debt or a running account with a money-lender has occurred to few of them, and the contingency, I may safely say, is regarded by these few with dismay and amazement as the very height of injustice and oppression. In Guzerat I apprehend that sales of Enam land, even in satisfaction of bond debts, have only become frequent of late years, and that sales of Government land on the same account have been wholly unheard of until very lately.' "

Now this opinion of Captain Wingate was not less decided than the others which he had just quoted. But a letter had just been received from a much higher authority, the Secretary of State for India, pointedly disapproving of sales of land by subordinate judicial officers.

Lord Stanley wrote—

"It cannot be doubted that the increased powers in respect of suits relating to real property, which of late years have been conferred upon the subordinate Civil Courts, have greatly promoted the rapid transfer of such property from old to new hands. It was not until the year 1831 that Moonsiffs were empowered to try any suits but those for 'money or other personal property' (Regulation XXIII. 1814, Section XIII, Clause 1), and up to that time those Officers were strictly prohibited from enforcing their own decisions and from issuing any process or using any coercive means for that purpose (Regulation XXIII. 1814, Section XLIX), for which an application to a higher authority was necessary. In that and subsequent years the powers of the Moonsiffs were greatly enlarged, and under the law now in force the Civil Courts of every grade are placed upon the same footing in regard to the description of suits which they are competent to try (subject only to certain pecuniary restrictions), and in regard to the execution of their own decrees. The check imposed by the necessity of a reference to a higher Court has been removed, and the number of sales, if I am rightly informed, has lately very much increased in consequence of the exercise by a number of Courts in every district of the

power of ordering a sale which formerly could be exercised by only one or two. This result is not surprising. The sale of an estate or portion of an estate registered in the Collectors' Books is the most ready way of enforcing a judgment; it gives the least trouble to both the creditor and the Court, and holds out every inducement to both to resort to that mode of satisfying the decree in preference to any other, even in the most trifling cases.

"With reference to the foregoing remarks, the question arises as to the expediency of altering the existing constitution of the Moonsiff's Courts, and of reverting to the system under which they were tribunals for the adjudication of suits only for money or other personal property, at the same time enlarging, if thought advisable, their jurisdiction in such cases. A further check might be imposed by providing that no process either for attachment or sale of real property shall be allowed in cases below a fixed amount, and that in suits exceeding that amount, the Moonsiff shall not be competent to issue such a process without the previous sanction of the judge."

The Right Honorable the Secretary of India did not go so far as the Officers of the North-Western Provinces; but his Lordship's objection to sales is scarcely less general.

They were not without experience on the effect of sales. Prior to 1834 lands were saleable in the district of the South-Western Frontier.

It was supposed that the sale of land in those districts was in part the cause of the rebellion, and all executions of decree by sale of land were prohibited; since then those large districts had been perfectly quiet. Again, in the Sonthal districts, the same thing had occurred. In those Pergunnahs no land can be sold under Rule 26, unless with the consent and sanction of the Commissioner; and those districts also had remained quiet since the laws were altered. He (Mr. Ricketts) would not say that this alteration of practice had alone secured the quiet of these territories; but there were frequent disturbances before the alteration, and there had been quiet since. The result was unquestionable and should not be ignored.

He (Mr. Ricketts) thought then, that, although the enquiry he proposed was more or less fraught with inconvenience, it should be made; and he thought that the same plan might be adopted as had been resorted to with regard to the Oaths question, and that the Council should through the Clerk circulate the following questions to all the subordinate Governments:—

1. Is it desirable that land shall be declared not saleable in execution of decrees of Court?
2. Should the rule embrace all land, or only estates paying revenue to Government?
3. Should the immunity extend to land which has actually been pledged as security for a debt?
4. In the event of sale not being allowed, should the Courts be authorized to attach land and liquidate the debt from the proceeds; or would it be better to rule that landed property shall in no manner whatever be answerable for debts?

THE VICE-PRESIDENT thought that it had better be brought forward as a notice of motion, and the consideration of so important a subject postponed till Saturday next. There might be strong political reasons for the change, but he (the Vice-President) could only designate a great deal of what had been written on the subject as sentimental nonsense. It was not, in his opinion, contrary to the notions of the Natives of India, that land should be sold for debt. According to the Hindoo Law, a person inheriting land had to pay the debts which his ancestor might have incurred upon it, and a Hindoo female might sell the land inherited from her husband, in order to pay his debts.

He (the Vice-President) could not see that much was to be gained by passing a Law to the effect that people should not pay their debts. He would instance the case of the late Nabob of the Carnatic, for the payment of whose debts a Bill had lately been before the Council, and whose exemption from legal process had only led to more extravagant usury, and to dishonesty and swindling on both sides. It was a question to which the most serious consideration should be given, since any change, such as was now contemplated, might shake credit throughout the country.

MR. GRANT said, that it was not his intention to oppose the motion for enquiry. The question appeared to him to be one on which, considering the opinions held upon it by many whose opinions were entitled to great respect, thorough discussion now would do more good than harm. He, for his own part, however, was inclined fully to concur in

what had fallen from the Chair. He agreed with the Honorable and learned Vice-President that a great deal that had been written and talked about the sale of lands for debts under civil process was no better than sentimental nonsense.

He believed that, if any Honorable Member was to bring in a Bill to carry out what some gentlemen of the North-Western Provinces and others advocated, the proper Preamble of the Bill should run—

"Whereas the sepoys of the Bengal Army have mutinied, therefore it is right that land in all parts of India shall no longer be a marketable commodity."

He did not follow this argument, but there were many who took a different view, and the question therefore demanded an investigation.

He thought, however, that it would be well if the Council took a little time to consider the proposal of the Honorable Member before determining upon it, and he should therefore move the postponement of the motion to the following Saturday.

The motion was postponed accordingly.

CUSTOMS DUTIES.

MR. GRANT gave notice, that on Saturday next the Governor-General would move the first reading of a Bill for levying Customs Duties on goods imported and exported by sea.

The Council adjourned.

Saturday, March 12, 1859.

PRESENT.

The Right Honorable the Governor General, in the Chair.

The Hon. the Chief Justice,	Hon. B. Peacock,
Hon. J. P. Grant,	P. W. LeGeyt, Esq.,
Hon. Lieut.-Gen. Sir J. Outram,	E. Currie, Esq.,
Hon. H. Ricketts,	H.B.Harington, Esq., and
	H. Forbes, Esq.

MESSAGES.

THE PRESIDENT read Messages informing the Legislative Council that the Governor General had assented to the Bill "to empower the holders of ghatwalee lands in the district of Beerbhoom to grant leases extending beyond the period of their own possession," and the Bill "to empower the Governor of Bombay in Council to appoint a Magistrate for certain districts within the zillah Ahmedabad."

CUSTOMS DUTIES.

THE GOVERNOR-GENERAL said, in accordance with the notice given on Saturday last, he begged leave to lay on the table of the Council, a Bill to alter the rates of Customs Duties on goods imported or exported by sea. In proceeding to explain to the Legislative Council the reasons which had induced the Government of India to place this Bill before them, it would be right that he should notice the extent of the pressure which had compelled the Government to resort to this measure, the financial position in which the Government now found itself, the principle which had guided it in framing this measure, and the results which might fairly be expected therefrom. It might be convenient, as would be found from the sequel, if he went back some little distance of time before the mutinies. All would remember that the first open declaration of mutiny showed itself within a few days of the expiry of the financial year ending 30th April 1857. At that time the financial position of Government was good and full of promise. He said this on the following grounds. At the beginning of the year which then expired, that is on the 1st of May 1856, the Government had found itself with a deficiency arising from excess of expenditure over income of not less than one hundred and four lakhs. This excess of expenditure was due, in main part, to large disbursements on account of Public Works. Accordingly, on the 6th of May 1856, the Government felt it to be its duty to take immediate steps to prevent a continuance of this excess in the year about to commence. The first and most obvious course for the purpose was to restrict the expenditure on Public Works. That was done by an order that no Public Works, not already commenced, and the cost of which would be more than 10,000 Rupees,

should be begun within that year. This order was impressed on all the local Governments. But shortly afterwards the Court of Directors, anxious that Public Works urgently required should not be set aside, authorized the Government of India to raise by loan, in the course of that year, one crore, in addition to such other sum as it might be necessary to raise for the necessities of the Empire. This authority gave the Government of India more latitude than at the commencement of the year they had expected to have. Nevertheless, the Government did not relax the restriction which it had imposed on the local Governments. The crore which it had thus been empowered to appropriate to Public Works was assigned to such works alone as could fairly be called remunerative. It was divided between the local Governments in the manner which seemed to the Supreme Government best; but even with this crore at command it was found necessary to curtail the proposed expenditure of those Governments upon works which had been already begun, to the extent of nearly 50 lakhs. This caused much disappointment to the local Governments, and to an admirable body of men who have done invaluable service to Government in all emergencies—our Engineers. It could not be described otherwise than as a lamentable and depressing necessity, when the Government had to check the expenditure by two-thirds, and in some instances wholly, upon such works as the Barce Doab Canal, the Ganges Canal, the Lahore and Peshawur Roads, and the Bridges of the Grand Trunk Road between this and the North-Western Provinces, leaving them in the unfinished condition in which they stand at the present day. However, it was a matter of imperative urgency to place the financial affairs of the country in a wholesome condition. Partly owing to the restricted expenditure, but more to the prosperity and increase with which the country was blessed. (the increase of the landed revenue in Madras and Scinde was especially noticeable,) the Government found itself, at the end of the year of which he spoke—that was on the 30th of April 1857—in what he had ventured to call a favorable and very promising position. The deficit in 1855-56, aggregating at the beginning of that year 104 lakhs, had been reduced to 18 lakhs. But this was not all. The Government had, in the course of that year, a very exceptional increase of expenditure imposed upon it by the Persian War. The expenses of that war amounted to 22 lakhs. It had also to raise establishments in its newly acquired province of Oudh. If there had not been the expenses of the Persian War to meet, not only would the deficit have been reduced, but a surplus of 4 or 5 lakhs would have been secured; and but for other quite unusual expenditure, that surplus would have been larger. Certainly this gave good promise for the future.

He offered this explanation, because he wished the Legislative Council fully to understand that, in laying before them a financial measure of some magnitude, a measure which must be distasteful to a large class of the community, the Government had not been driven to that step by any lavishness of expenditure, or any laxity of watch over the revenues at its command.

The Government, then, began the year 1857-58 with no greater deficit than 18 lakhs. It had almost touched the point, at which, amongst states as amongst individuals, all who desire to administer their financial concerns with honesty and safety, must aim—namely, a balance of expenditure with revenue. It saw before it an early opportunity of being able to prosecute large works of material improvement without either increasing the burdens of the people, or anticipating the resources of its own successors on whom the future administration of the country should devolve.

This was a prospect to which he had looked forward eagerly. But it was not permitted to him to realize it. The new financial year was little more than a week old, when the spark fell which lit up a conflagration the embers of which were now and only now dying out. That was no longer the time to talk of balance sheets. Every hand, and heart, and brain, were needed for the struggle. We have now risen from that struggle, our honor vindicated, our power secured, and our character, as masters merciful in our strength, not, he ventured to hope, unworthily

maintained. But we had risen with resources drained; in the opinion of some, though he did not share in that opinion, with resources well nigh exhausted; and it was incumbent upon the Government to increase the revenue by the readiest and soundest means which it could devise.

It might be well to state to the Council, without going into detail, for which he was not prepared, some of the general heads of the expenses of the war, in order to show that the necessity which drove the Government to seek for new taxation, was not a doubtful one. Since the outbreak of the mutinies in 1857, there had been poured into India, from England, not less than 52 regiments of infantry, 9 of cavalry, and 33 companies of artillery and engineers. Every regiment of this large army had been kept in a state of constant efficiency, ready to take the field at a moment's notice, and for this purpose a stream of reinforcements, amounting for Bengal alone to 20,000 men, had been kept up. One hundred and sixty-five transports, most of them of the largest class, had entered the Hooghly. The number of horses landed in Calcutta alone was 5,000, and at least a proportionate number had been landed in Bombay for the use of the army on that side of India. The expense of the commissariat in 1857-58 amounted to two millions sterling—or at least the double of what it had been in the preceding year. The cost of that department for the following year was likely largely to exceed that sum. Upwards of 70,000 stand of arms, and more than 186,000 rounds of shot and shell had been landed in Calcutta.

The amount of other necessaries of war was in the same proportion. And when it was remembered that these expenses were incurred at a time when every necessary of war, from an elephant to a camp kettle, had risen in price 20, 50, 100, in some cases 300 per cent.; that during that time the cost of carriage, especially by water, had reached such a height that during the last year the Government had paid at the rate of £10,000 a month for the conveyance of men and stores between Calcutta and Allahabad; and that a more than corresponding increase of cost in England must be added to the cost in India, he thought that he might claim from the Legislative Council the admission that it was no imaginary necessity which led him to place this Bill upon their table.

But the cost of these gigantic operations might be measured in a way more distinct and complete than by the enumeration of details of this kind. When we arrived at the 30th of April 1858, the Government found, instead of a deficit of 18 lakhs from excess of expenditure over income, a deficit of 817 lakhs; that was to say, it found itself in a worse position than at the commencement of the year 1857-58 by 799 lakhs. Of that increase of debt 601 lakhs were due to expenditure in India—the rest was due to expenditure at home. Of the items of expenditure at home he was unable to give the particulars. Of the expenditure in India 350 lakhs were due to loss of revenue, 130 lakhs to loss of treasure, and 382 lakhs to increase of military expenses. Up to that period—that was to say, up to the end of the last financial year—he could speak with knowledge and certainty. For the year now about to close he could speak only according to estimate; but he was bound to say—and it was not to be expected that it should be otherwise—that there was no sign of bettering the condition of our financial affairs by the 30th of April now ensuing. He feared that the deficit for the current year would exceed thirteen hundred lakhs. To meet this expenditure, the Government had been compelled to have recourse to exceptional resources. By debentures in England, in the course of the past year, 8 millions sterling had been raised. By the loan of last year in India, counting from the opening of it to the present day—namely twenty-two months—the amount raised was 91½ lakhs. These two sums together did not meet the expense of which he had just spoken. But the expense was met within a very trifling sum from the excess which existed between the cash balance in May 1857 and the cash balance in May 1858. The difference between these two balances amounted to 41½ lakhs, and that sum, joined to the two sums raised by loan in England and India, very nearly came up to the full amount of the ex-

The Governor-General

penditure he had mentioned, including in this the estimated deficit of the current year. Now, whatever might be done by loans, and whatever might be the opinions held as to the loans which had been levied, and as to the extent to which they should be raised in England or in India respectively—and there was a difference of opinion on those points—it was incontrovertibly the fact that, come the loan from where it might, the Government of India must find the interest for it. On that ground alone he asked the Legislative Council to give their assent to this Bill. It was the duty of the Government to provide at once for the payment of the interest that would be required by increasing the revenue by every means within its reach which sound policy would allow; and of all such means he knew of none which would be less injurious to public or to private interests than the proposed measure of raising the duties in the Tariff.

It was, doubtless, well known to the Council, that the Tariff, as it stood, was based on a system of financial policy which had now for some years passed away in England. The last occasion on which any rise in the duties had been sanctioned by the Indian Legislature, was in the year 1845.

In 1848 changes were introduced in consequence of changes adopted in England, which, in certain instances, modified the protective character of the duties; and at present protection was no longer given to the national flag, but only to goods of British origin.

Upon goods of British origin the duties varied from 3½ to 5 per cent., and upon goods of Foreign origin from 5 and 5½ to 7 per cent.

He proposed to put on the table a copy of a Resolution which the Government of India had passed at the commencement of the month, and which would set forth completely the changes submitted for the assent of the Legislative Council.

The nature of those changes was this. Everything which bore the semblance of a differential or protective duty, was done away with. If this Bill should be passed, not a Rupee would be raised in India except for the purpose of the revenue. On all articles of luxury, and not of prime necessity, it fixed a duty of 20 per cent. On the generality of articles, and on all that were not enumerated, it fixed a duty of 10 per cent. On cotton yarn it fixed a duty of 5 per cent.; and it gave an immunity from duty to certain articles. Amongst these were bullion, grain of every description, cotton wool, machinery for the improvement of the communications and for development of the resources of the country, horses, and all sorts of cattle, coal, and books. He claimed no great merit for the Government in exempting these articles from duty. Most of them were exempt already by law, and others were so practically. Duties were prescribed for these latter in the Statute Book, but it was competent to the Supreme Government to suspend the levying of them by an order, and this power had been freely exercised already. Henceforth, however, it would stand recorded that each and all of these articles would be free by law for ever.

He next came to articles which he proposed to tax with the comparatively heavy duty of 20 per cent. The articles were tea, coffee, tobacco, spices, haberdashery, hosiery, grocery, provisions, perfumery, and jewellery;—and to articles which were subjected to a rate assimilating to 20 per cent., but which would not be levied as an *ad valorem* rate. These were beer, wines, and spirits.

These changes would bear mainly on the European community; but he thought he might appeal to that community to submit ungrudgingly, at a moment like the present, to the increase which they would make to their burdens, especially when they considered that, notwithstanding that increase, they would be in no worse a condition than that of their fellow-countrymen in the colonies of this Empire, and that they would be in a far better position than the inhabitants of any European State. To establish this statement, he would refer to the respective rates imposed in the other colonies and in Great Britain, upon the articles of most general consumption.

Taking the average cost of tea in India at 12 annas a lb, which he believed to be a fair estimate, the Bill before the Council gave a duty of 3½*d.* on the

lb. When it was remembered that the duty in England was very nearly four times that amount—that in other States of Europe, for the most part, the duty was very much above that which obtained in England—that in our colonies of the Cape, of Ceylon, and of Victoria, it was considerably higher than that now proposed, being in Ceylon and Victoria 6*d.* a lb, and at the Cape 4½*d.* a lb, and that in Sydney alone it was lower by one-half penny—he could not think that the duty proposed for this country was too high. The article of coffee, if taken at the value of 16 Rupees for 80lbs., would give at 20 per cent. a duty of 1*d.* in the lb, or only one-third of what was levied in England, and only one-half of what was levied in Victoria and Sydney. In the article of tobacco, taking the best at the value of 30 Rupees for 80lbs., and the cheapest at the value of 12 Rupees for 80lbs., the *ad valorem* duty of 20 per cent. would vary from 3*f.* to nearly 2*d.* a lb. Compared with the duty imposed on the same article in England, this was an utterly insignificant amount. In England manufactured tobacco was subject to a duty of 3*s.* per lb; in our colonies of Victoria and Sydney a duty of 2*s.* per lb. was charged. There were only two colonies, Ceylon and the Cape, at which the rates stood lower; namely, 1*d.* at Ceylon and 1½*d.* at the Cape.

He would pass over as less deserving of notice, and as items respecting which it was scarcely necessary to occupy the time of the Council, the rates which the Bill imposed upon spices, haberdashery, grocery, provisions, perfumery, and jewellery. These were for the most part luxuries, and, moreover, it would be difficult to institute any fair general comparison between an *ad valorem* duty upon them in this country, and the duties levied upon them at home, and in the colonies, inasmuch as all these heads were broken up into many sub-divisions in the Tariffs of other countries. The only Tariff that he was acquainted with, which presented an opportunity of making such a comparison, was that of the United States, and the duty in that Tariff on every one of the articles in question was 100 or 150 per cent. higher than the duties proposed to be levied by this Bill.

The Governor-General

He then came to beer, wines, and spirits. Measuring the duty by the rate of 20 per cent., it was proposed to impose upon beer a duty of 4 annas per gallon. In Victoria it was the same as that now proposed to be levied here. In Sydney it was only 1*d.* In Ceylon 3*d.* In respect of this one article, therefore, India will be less favorably placed than those two colonies.

On wines the Bill proposed to levy a duty of 2 Rupees a gallon. That was below the rate in England, and considerably below half the rate of 10*s.* a gallon levied in Sydney, but it was more than the rate in Ceylon which was 1*s.* 6*d.*, and the rate in Victoria which was 2*s.* a gallon.

On spirits it was proposed to raise a duty of 3 Rupees per gallon. This was very much less than the duty fixed in England, where it was £1—much less than the duty imposed in Sydney and Victoria where it was 10*s.*, and only a trifle more than the duty imposed in Ceylon where it was 5*s.* He had shown, therefore, that only to an inappreciable extent would some of the colonies enjoy any advantages over India, and those in respect of articles the general consumption of which does not stand in need of encouragement.

On articles not included in the above enumeration, a duty of 10 per cent. was proposed to be levied. In respect of these it would be unnecessary to say much. There was, however, only one article of importance which, coming under this general head, ought not to pass without notice—cotton piece goods. No doubt the rate of increase, from 5 to 10 per cent., was considerable, but seeing how deep a root that trade had taken in India, how steadily it had increased, and that it now much exceeded in value 3 millions sterling a year, he had no apprehension that the proposed enhancement of the duty to 10 per cent. would affect it in the slightest degree. An exception had been made in favor of cotton yarns. But this was a half manufactured article, and one which tended to the promotion of Native industry. The trade in it had been fluctuating, and had not yet taken so firm a hold of the country as that in the fully manufactured article, to which he had last adverted, had done, and the Government would do wisely in fixing

the duty upon it at no higher figure than 5 per cent.

Before proceeding to speak of the results which were expected from these changes, it was necessary to say a few words respecting the alterations proposed in the duties on exports. Although these were not large, there were one or two not without importance. The only article amongst exports on which it was intended to levy any increase of duty, was grain. On grain a duty of 2 annas per maund, or 4 annas per bag, was proposed, the duty at present being between ½ an anna and 1 anna a maund, and between 1 anna and 2 annas per bag. From the best information which the Government had been able to command, he believed that this increase would not affect the export of grain in any appreciable degree. Should this expectation be realized, the change would yield to the Government an increase of 20 lakhs of revenue, without inflicting injury on any interest whatever. But although that was the only increase contemplated in export duties, there were two articles the export duties upon which it was proposed to remove altogether—silk and tobacco.

Silk had last year paid upwards of 1½ lakh. The duty upon it was 3½ annas a seer. He proposed that this duty should be altogether abolished, and that the competition of India in silk with other markets should be left wholly unshackled.

On tobacco the sum which the existing duty produced was inconsiderable, the tobacco of India not being well known, or being unsuited to foreign markets, and the loss would be limited to 29,394 Rupees. It was not to be supposed that this duty was abandoned because tobacco was not a fit subject of taxation, or one which might fairly be made to yield a profitable revenue. But it was his opinion that, if a duty was to be raised on this article, it was far better that it should be raised by an internal or an excise duty, levied possibly in the form of a tax upon the growers, than by an export duty at the port.

There was one other export duty which it was proposed to give up—that on spirits, which was quite insignificant. In the last year for which accounts were forthcoming, it had produced a revenue of no more than 55 Rupees.

If the Legislative Council should sanction this measure, the result of it, assuming that consumption would in no sensible degree be diminished, would be this:—The duties levied on imports during the last year for which accounts were available, amounted to 75½ lakhs. The amount levied on exports during the same year was 28½ lakhs. The increase under the proposed new Tariff would be, as regards imports, about 74½ lakhs, and, as regards exports, 20½ lakhs; this last being due solely to grain. The sum total of the Customs Revenue in the last year for which there were accounts before the Government, was 1 crore and 4 lakhs. The addition which would be obtained by increased rates under this Bill, calculated, as he had said before, on the hypothesis that consumption would not diminish, would be 95 lakhs, giving a total of 1 crore and 99 lakhs. On the other hand, there would be a decrease in the export duties of 1¾ lakh. This would reduce the total to 1 crore 97 lakhs and a quarter;—that is to say, the Customs duties will give within three lakhs of two crores.

There remained to be decided the time at which the Bill, if passed, would be brought into operation. In an ordinary case, a delay of three months must intervene before a change in the law could take effect. It was his intention, if the Legislative Council read this Bill a first time to-day, to propose that the Standing Orders be suspended, and that effect be given to its provisions at once. In proposing to do this, he was not unmindful of the interests of the class which was most directly concerned in the change. But the Government was of opinion that it would be better for all classes, including that particular class, that there should be no interval of suspense between the enactment of such a law and the bringing of it into operation. This had been the rule of practice in England. The forms of procedure there were somewhat different indeed, because in Parliament they had the means of giving effect to any changes, by passing a Resolution which should have the force of law pending the enactment of the law itself; the new duties coming into force from the day that the Resolution was adopt-

ed, and the law, which was passed with greater deliberation, giving indemnity to Collectors who had acted on the Resolution in the meantime. But there were reasons for this course in England which did not exist here. In England no law could pass at once, as there were two branches of the Legislature through which every Bill must be carried. And a delay of even a few days between the introduction of the enactment of such a measure, and its being brought into force, created great confusion and disorder, and benefited nobody. He therefore proposed, if a first reading were given to the Bill, which he had had the honor to introduce, to resort to that course of which he by no means approved as a general rule, but which he thought was advisable in cases of this nature, and which would have the same effect as acting by Resolution; the course, namely, of suspending the Standing Orders.

There was one case, however, in which hardship might arise if this were done without limitation. It was the case of persons who might have entered into contracts at prices calculated according to the duties fixed in the existing Tariff. To save such persons from all injustice, a clause had been inserted in the Bill, authorizing the contractors to claim the new duties from those to whom they were engaged, just as though these duties had been considered in the contract.

There were two articles omitted in the Bill, on which it was right to say a few words—these were salt and opium.

With respect to salt, although he was very far from subscribing to the opinion which had obtained in England sometime ago as to the impolicy and oppressive character of the Indian salt duties, he still considered that the Customs duty was not one which ought to be touched for the purpose of raising it. Should it hereafter be touched, it would be by the Executive Council that the question must be dealt with. He would content himself by saying that he was entirely opposed to an increase of it in Bengal.

With respect to Bengal opium, it was not intended that it should find a place in this Bill. The duty on that article was raised irrespectively of the Customs Law, and it was competent to the Executive Government to deal with it. He had no intention to introduce any change whatever in respect of it. He thought that it would be very difficult to devise any scheme for loading an article with the largest amount of tax that it could contribute to the State, which should show so much ingenuity and successful policy as the scheme under which opium was grown in Bengal. He did not deal with the question as one of morality or dignity, but as one of finance. In Malwah, however, there was a clear stage for acquiring more revenue. The last time the duty there was touched, it was raised to 400 Rupees a chest. Since the increase, the export of Malwah opium had very nearly doubled. The rise in the export at the Presidency of Bombay had been from about 16,000 chests in 1848, to more than 37,000 chests in 1858. The value of a chest of Malwah opium at Bombay was something more than 1,200 Rupees. Each chest reached the owner there at a cost of not more than 900 Rupees. There remained a margin, therefore, of 300 Rupees, and from that margin it was quite fair that the Government should claim an increase of revenue, and this might be done with little or no risk of smuggling or of diminished production.

This measure, however, was one in which the co-operation of the Legislative Council was not necessary. Indeed, it had been already adopted, and instructions had been sent to the Governor-General's Agent, that the duty to be henceforth levied upon Malwah opium should be 500 Rupees instead of 400 Rupees per chest. Taking the increase to be derived from the Customs at 93 lakhs, and the increase from Malwah opium at 37 lakhs, he hoped it would be admitted that a very considerable addition would be made to the revenues of the country by means as little oppressive to the interests of individuals or of trade as possible, and in no way opposed to the principles of sound policy.

He would make but one remark before he resumed his seat. Of course when he said that the consumption of the goods—the duties upon which it was proposed to increase—would suffer no check, the calculation was a hypothetical one. But he hoped he had proved, by his appeal to the rates of taxation

The Governor-General

in other countries, that the duties prescribed in the present Bill were moderate. And if they were moderate, he had little doubt that, in a country like this, where expenditure was liberal, and where many of the most productive articles, if not actually necessaries, very nearly approached to them, the anticipation of Government would be fairly fulfilled.

With these explanations he begged to move the first reading of the Bill.

MR. GRANT seconded the motion, which was then carried.

The Bill was read a first time.

THE GOVERNOR-GENERAL moved that the Standing Orders be suspended, in order that he might carry the Bill through its remaining stages.

MR. GRANT seconded the motion.

MR. CURRIE said, he had no intention whatever of opposing the motion for the suspension of the Standing Orders to the extent of reading the Bill a second time this day; but he had understood the Noble Lord to say that he proposed to pass the Bill at once, at the present sitting. He thought that the Council ought not to be called upon to pass a Bill of this kind without having had an opportunity of considering the details it involved, and, therefore, that the passing of the Bill should not take place until next Saturday. It was true that the Bill had been read at length at the table; but it was scarcely possible to follow all the items as they were read, and to give to each provision the consideration which might be necessary. It appeared to him to be making mere cyphers of those Members of the Council who had had no previous opportunity of becoming acquainted with the provisions of the Bill to call upon them to pass the measure at once. Even as the Clerk read the Bill, two points had struck him as open to question. The first was the provision respecting salt. The Bill repeated absolutely the existing Tariff which fixed a duty on salt. Afterwards it was said that nothing in the Bill should apply to salt. He did not see exactly in what state these provisions would leave the law respecting the salt duty. But, however that might be, he thought that the salt duties ought not to be left in their present state. The legal duty upon salt was 3-4 per maund. The Executive Government, it seemed, had power to reduce that duty by an order of Government. It had thrice reduced it, and the actual rate which was now levied was 2-8 per maund. Whether this diminished rate was retained, or increased, or further lessened, he thought that the duty to be actually levied should be fixed by this Council. His own opinion was that some portion of the legal duty, which the Government had foregone, ought, in the present times, to be re-imposed.

Then, he did not see any reason why machinery should be free from duty. He supposed that most of the machinery imported was imported for the purposes of the Railway; and if the Railway Company ran its trains at a profit, he did not see why the machinery, which came out to it, should be exempt. All such exemptions were fruitful sources of dispute and dissatisfaction.

THE GOVERNOR-GENERAL said, with reference to what had fallen from the Honorable Member for Bengal, he should first touch on the question raised by the Honorable Member as to the suspension of the Standing Orders, and the end to be attained thereby. He hoped that it was unnecessary for him to say that nothing had been further from his thoughts than to propose a course of procedure which could be reasonably construed into a slight upon any Member of the Legislative Council. He had stated his reasons for pressing forward the measure—reasons in no way concerning the Government, but concerning the interests of the Community at large—and supported by the invariable practice which obtained in the Parliament of England. The object of the Government was to avoid doubt and suspense which, more than anything else, paralyzed mercantile action, and which were sure to arise if an interval of time were to take place between the enunciation and the enactment of the Law, and if the community were kept in ignorance of what the Tariff was to be. Of course, if any delay, not inconsistent with this object, would enable the Legislative Council to consider this Bill with greater deliberation than its immediate adoption would do, it would be most gladly acceded to by him: and after the appeal made by the Honorable Member, he was quite ready

to receive any suggestion which he or any other Honorable Member might make as to a day for the further consideration of the Bill. But he would only beg of the Honorable Member to consider again, that the pressing forward of the Bill was for the interest of the whole community, and that it was on no other account than this that the Government was concerned in doing so.

As to the supposition of his Honorable friend, that a slight was conveyed in his motion on the Members of this Council who were not connected with the Executive Council, he was sure that it would not hold in his mind when he remembered that it was the invariable practice in the Parliament of England, to pass any measure which effected any large change of this nature in the same way, and that this was done with less deference to the assembly which was there called upon to act, since the measure was not dealt with as a Bill, which necessarily is considered in Committee, but in the form of a Resolution which was brought down to the House, and proposed and passed in one action.

With respect to salt, he had expressed his opinion that it was not advisable to increase the Customs rate upon it to any extent. His expression was that it ought not to be touched in the direction of raising. If the Honorable Member for Bengal wished to introduce a Clause on the subject into the Bill, the Government would be happy to consider it in the Committee, or in any of the remaining stages of the measure.

THE CHIEF JUSTICE said, the course proposed by the Government took him somewhat by surprise. In common with the Honorable Member for Bengal, he had been under some impression that, although the Bill would not be allowed to run the ordinary course of being three months before the Public, and that the Standing Orders would be suspended in respect of it, still he did not expect that they would be suspended to the extent of passing the Bill into law at once to-day. His own opinion certainly was in favor of the suspension of the Standing Orders, if necessary, for the purpose of letting it go through a Committee of the whole Council to-day; but he would allow a delay of one week in its final enactment, to admit of an expression of opinion respecting its details from beyond the walls of the Council. If the Bill were passed to-day upon discussions which were confined to the Council Chamber, the consequence might be that representations might come in from the Public at large, which might lead to the repeal of the measure and the enactment of another law. He admitted that the analogy derived from the practice of the Parliament in England, and which His Lordship had suggested, was to some extent correct; but either from the imperfection of our machinery, or from some other cause, the Public here would be at a disadvantage, under which the Public in England did not labor, and the measure passed would not receive that full discussion which it would have received under the system at home. There, the Chancellor of the Exchequer would go down to Parliament, and propose a Resolution altering the Customs duties. The House at large would be taken as much by surprise as those Members of this Council who were not also Members of the Executive Government were at the Bill proposed to-day. But the House would, from the confidence which it reposed in the Government, pass the Resolution, the effect of which would be that the new duties would come into operation at once. A Bill would next be framed upon that Resolution, and there would then be an opportunity of discussing each article of the Tariff, and in the Act as finally passed, there might be modifications introduced in consequence of suggestions from the House at large and from abroad, which would show that what the Government proposed was capable of improvement. Here, however, if the Bill before the Council should be passed to-day, and the details should appear to be capable of improvement, there would, under the local system, be no means of improving them, except by introducing another law to amend the Tariff. That, certainly, would afford the means of alteration, but it would not altogether be so convenient a course as that of considering the Bill in Committee to-day, but deferring its final enactment

The Governor-General

for one week. If, therefore, there was no overwhelming necessity for passing the measure this day, and a short delay would give the Commercial Community an opportunity of being heard upon the details, it appeared to him that it would be better to give them that opportunity. He should vote accordingly for the suspension of the Standing Orders so far only as to settle the Bill in Committee to-day, postponing the third reading until next Saturday.

He certainly did not think that the Executive Government had intended any slight upon this Assembly in the proposal to pass the Bill at once; but certainly to ask the Council to assent to such a course in respect of a measure involving details of so important a nature which several of its Members had no opportunity of considering before, did seem to him premature.

At present, it seemed to him necessary to adopt such a measure as this. It was not a matter of argument, but one of figures and arithmetical demonstration.

He was in favor of the general principles of the measure; but as to the details, he was not certain that there might not be some objections by persons more conversant with such matters than he was.

MR. PEACOCK spoke in support of the opinion that the Bill should be passed this day. If, however, any Honorable Member desired time to consider its details, a clause might be inserted, providing that the rates of duties prescribed in it should take effect from this day, but that the Bill itself should be further considered and passed by the Council on the 31st Instant, or even on Monday next, the Collector of Customs being indemnified for enforcing the increased rates in the mean time. This would be in accordance with what had only recently been done in England. Any delay in imposing the new duties might raise the impression that the Government and the Council had not made up their minds about the measure, and the effect of this would be to unsettle trade—a result which it was very important to avoid.

The question, that the Standing Orders be suspended, was then put and carried.

THE PRESIDENT next moved that the Bill be read a second time.

The Motion was carried, and the Bill read a second time.

After some conversation, the President gave notice of Motion for a Committee of the whole Council on the Bill on Monday next, the 14th Instant.

MADRAS POLICE.

MR. FORBES moved the second reading of the Bill "for the better regulation of the Police within the Territories subject to the Presidency of Fort St. George."

MR. HARINGTON said, before offering any remarks upon the Bill to which the motion of the Honorable Member for Madras referred, he wished to ask the Honorable Member a few questions. *First*—He desired to be informed who, if this Bill should pass into law, would be considered responsible in the Districts, into which it was introduced, for the maintenance of order and the repression of crime—the District Magistrate or the District Superintendent of Police? His *second* question was—What were to be the duties of the Police under this Bill on the apprehension, without the issue of a warrant by the Magistrate, of persons charged with criminal offences, in addition to bringing the accused before the Magistrate within a certain period. In such cases were the Police to make any preliminary investigation, and, if so, what was to be its nature and extent, and by what rules were the officers making the investigation to be guided? *Thirdly*—He wished to be informed, under the head *Police Officer* in Section XXIII of the Bill, what Officers of the proposed Police Force were intended to be included. His *fourth* question was—Were the Village Watchmen or Chowkeydars to be entirely under the District Superintendent and Chief Commissioner of Police, and to be appointed and removed by those officers, or was the District Magistrate to exercise any and what control over them? And, *fifthly* and *lastly*—He desired to be informed with what object and for what purpose

was the Chief Commissioner of Police to be appointed a Magistrate throughout his jurisdiction.

MR. FORBES said that, as the Honorable Member for the North-Western Provinces had, with his usual courtesy, given him notice of his intention to ask these questions, he had come down to the Council prepared to give what he hoped would be satisfactory replies. He had stated, when he introduced this Bill, that, as he did not approve of its principle, he thought he should be doing more justice to it if, instead of speaking upon it himself, he allowed the Madras Government to be heard in support of their own measure, and in like manner he considered that he should best reply to the questions of the Honorable Member if, as far as possible, he replied to them from papers furnished to him by the Government.

The first question which he had been asked was—"Should his Bill pass into law, who will be considered responsible in the Districts into which it is introduced for the maintenance of order and the repression of crime, the District Magistrate or the District Superintendent of Police?" To this question he would reply that it was the intention of the Madras Government that the Magistrate should be held responsible for the maintenance of the peace; and in support of this view he would read an extract from a Minute recorded by the Governor:—

"The Collector and Magistrate should be considered as the Chief Administrative Officer of Government in each province. In this capacity he would direct the distribution of the Police, and call for their services when required; but he would have nothing to do with the interior economy of the force—that would be regulated by the Commissioner, under the orders of Government."

The second question which had been asked him was—"In such districts what are to be the duties of the Police in the apprehension, without a Magistrate's warrant, of persons charged with criminal offences, in addition to bringing the accused before the Magistrate within a certain period? In such cases are the Police to make any preliminary investigation, and, if so, what is to be its nature and extent, and by what rules are the Officers making the investigation to be guided?"

In introducing this Bill, he had said that the Police Force to be constituted by it would be guided entirely by the Code of Criminal Procedure; and he had added that the Sections in the Bill which referred to procedure had been purposely left as they had been drafted at Madras, because, if the Code passed into law before this Bill, they would be struck out in Committee; and if this Bill became law before the Code was passed, they would be modified in Committee, so as to suit whatever it might be determined should be the established course of procedure.

The third question was—"Under the head *Police Officer* in Section XXIII of the Bill, what Officers of the proposed Police Force are intended to be included?" And this question he would reply to by referring to Section 11 of Chapter VI of the Code, in which it was enacted that "a Police Officer may, without warrant, arrest, of his own authority, a person against whom a reasonable complaint of an offence, for which a warrant may issue on complaint, is made." The Section in the Bill now before the Council was taken from the Section in the Procedure Code which he had just read.

The fourth question put by the Honorable Member was—"Are the Village Watchmen or Chowkeydars to be entirely under the District Superintendent and Chief Commissioner of Police, and to be appointed and removed by those Officers, or is the District Magistrate to exercise any and what control over them?" To this question he would reply by reading extracts from two Minutes recorded by Lord Harris on the 4th of May 1855 and the 11th of September 1856. In the first Minute Lord Harris had said that "the plan of leaving the Village Police entirely under the local authorities, and ultimately under the Collector, is judicious and almost necessary under the peculiar circumstances of society in India;" but in the second Minute His Lordship said that "on one point, since writing on this subject, I have very decidedly changed my opinion, and that is with respect to the Village Police. They, I think, should be under the same control as the District Police, in order to ensure uniformity of discipline and action."

From this the Honorable Member might assume that the Village Police was intended to be entirely under the Chief Commissioner and District Superintendent.

But he would further refer the Honorable Member to the Bill itself. In the first Section the Honorable Member would find that the word "Police" was interpreted to include "Village Police," and in Section XI he would find that the appointment and dismissal of all Police Officers, including therefore the Village Police, were to be vested in the Chief Commissioner. The Honorable Member would further find in Section II, that the Regulation under which the control of the Village Police had been vested in the Magistrate, was repealed.

Lastly, he had been asked—"With what object and for what purpose is the Chief Commissioner of Police to be appointed a Magistrate throughout his jurisdiction?"

It was not intended that the Chief Commissioner should interfere in any way with the ordinary duty of the Magistracy, and power to officiate as a Magistrate was to be given to him only in order that, in time of political difficulty, or in cases in which it might be unadvisable that notoriety should be given to any particular investigation, the Government might be enabled to commit the enquiry to the Chief Commissioner, and thus obtain the information they desired in a more quiet and secret manner.

MR. HARINGTON said, having first thanked the Honorable Member for Madras for so fully answering the questions which he had considered it necessary to put to the Honorable Member, he would proceed to address himself to the motion before the Council. The Bill, of which the Honorable Member for Madras had just moved the second reading, being limited in its application to that Presidency, and having been introduced at the request of the Government of Madras, acting under orders from Home, the opposition which he (Mr. Harington) felt it to be his duty to offer to the further progress of the measure, at any rate until the Council had better means than it at present possessed of forming an opinion upon the advisability or otherwise of its adoption, would not improbably be met by the objection which he had heard more than once within that chamber when exception had been taken to local measures, recommended by any of the subordinate Governments, namely, that the Government which proposed the particular measure must be the best judge of the necessity or propriety of its introduction; and that, ordinarily, this Council should not refuse its assent to local laws applied for in due form, and considered by the Governments applying for them essential to the proper administration of affairs in the Territories committed to their charge, for which they were of course immediately responsible. When any particular measure, for the introduction of which legislative sanction was required, was altogether of a local nature, this objection might be entitled to some consideration and, as a general rule, he for one should be disposed to admit it; but it was scarcely necessary for him to say that such was not the character of the Bill before the Council. The principle upon which that Bill was based was one of general application. That principle he understood to be that the union of police and judicial functions in one and the same Officer was wrong and objectionable in itself, and unjust towards parties accused of criminal offences, inasmuch as it subjected them to be tried before the authority whose duty it was to cause the apprehension of criminals, and to collect proofs of their guilt. Now, if such union was wrong in principle in Madras, and should no longer be allowed to exist in that Presidency, he submitted that it must be equally wrong in principle in the Punjab, where it also existed; it must be equally wrong in principle in the North-Western Provinces and in the Lower Provinces of Bengal, in both of which places it was also to be found; and it must be equally wrong in principle in every other part of India into which it had been introduced, and where it was still maintained; and this Bill, instead of being restricted in its application to the Presidency of Madras, should be made generally applicable, not only to that Presidency, but to each and all of the places to which he had alluded, unless it could be shown that they were so dissimilar in their circum-

stances and in the character of the inhabitants, that what was wrong in principle in the Presidency of Madras was not wrong in principle in them. Now he had no hesitation in saying that there was no such dissimilarity, and if any Honorable Member was prepared to assert to the contrary, he trusted that he would point out in what the want of resemblance consisted. Except in the recency of its acquisition, what he would ask was the material difference between the province of Oude, in which the separation of the police and judicial functions heretofore vested in the same authority was now being carried into effect, and between the adjoining districts of Goruckpore, Azimghur, Juanpore, Allahabad, Cawnpore, and Furruckabad, and the province of Rohilkund, which also bordered upon Oude. So that if he should vote in favor of the motion of the Honorable Member for Madras for the second reading of the Bill brought in by him, and any Honorable Member should hereafter get up in Committee and propose the extension of the Bill to the North-Western Provinces, with what show of consistency could he vote against the proposition; on what ground could he justify his acquiescence in the introduction of the principle of the Bill into the Presidency of Madras, and his refusal to allow it to extend beyond the limits of that Presidency—how could he reconcile the two votes? He could not therefore consent to vote for the second reading of the Bill under consideration, contrary to his own convictions, simply because the Madras Government had asked for it, and because he might be told that there was no intention of extending the principle of the Bill, for the present at least, to the part of the country which he (Mr. Harington) had the honor to represent. He saw reason to fear that, if those who advocated this particular measure succeeded in getting in the thin end of the wedge, they would never stop until the whole wedge was introduced. He thought that every one would allow, as well those who were in favor of the present Bill, as those who objected to it, that it proposed to introduce a vast and most important change into one of the most important departments of Government. So vast, so important indeed was the alteration which this Bill, if carried, would effect in the Police system of Madras, that he thought its very extent should make them the more cautious how they gave their assent to it, and should lead them, before committing themselves to the principle of the Bill, by allowing it to be read a second time, to enquire whether so sweeping a change was necessary: what were the evils which this Bill was intended to remedy; was this Bill the best practical remedy for those evils—and was not the existing system susceptible of improvement to a sufficient extent to admit of its fulfilling what was required of it? To the theory of the Bill he might have no objection to make. In theory it might be quite right that the same Officer should not be allowed to exercise police and judicial functions, and in some places the separation of those functions and their being vested in different Officers might be very right in practice also. But there were many things which, in theory, might be right all over the world, and which in some places might be found good in practice also, but which, if introduced into this country, would prove not only not good but positively mischievous. It might have been quite correct in theory to declare that money might be traded with like any other commodity, and that the rate of interest to be charged on loans was not a fit subject for legislation; but they knew that the result of the exaction of usurious interest was a rebellion not long ago in one part of the country, the suppression of which, as they were told by the Honorable Member of Council opposite (Mr. Ricketts), on Saturday last, cost many valuable lives, and a large outlay of public money. In theory it might have been quite right to legalize the re-marriage of Hindoo widows, and the Bill brought in for that purpose by the Honorable Member of Council on his left (Mr. Grant) received his cordial support, though he had before him, at the time, the opinions of former Judges of the Sudder Court at Agra, in which they strongly deprecated the passing of such a law, which they believed would be very unpopular amongst the people, and would be regarded by them as an im-

Mr. Harington

proper interference with their prejudices, habits, and religion. It might have been quite correct in theory to declare that a change of religion should not be followed by a loss of civil rights, yet many old and experienced Officers would tell them, with what truth he could not say, that the measures to which he had been alluding and others of a similar character, induced a very general belief amongst the natives, that those measures were adopted not because they were good in themselves, or because they cared for Hindoo widows, or for the property of Natives converted to Christianity, but because they were determined, by fair means or by foul, to christianize the country; that the late mutiny in the Native Army of Bengal was the consequence, in some degree, of that belief, and that where the more respectable classes of natives joined the sepoys, it was because they sympathized with them, and considered that the sepoys were fighting the battle of their religion. It might be quite correct in theory to declare that a man should pay his just debts, and that the whole of his property, as well as his person, should be made answerable for their amount, and yet, presently, they would be engaged in a debate, the object of which was to determine whether, looking at the question in a political point of view, it was not objectionable in practice to allow land to be sold for the recovery of money demands. So that in coming to a decision upon the important measure before them, he thought they should be careful not to allow undue weight to the consideration that it might be perfect in theory; what it appeared to him they should rather look to was, what would be the practical effects of the measure.

To ascertain the grounds on which this great change in the management of the Police at Madras was proposed for adoption, he (Mr. Harington) naturally went to the preamble of the Bill; but there he found nothing beyond a general declaration of expediency, which of course did not help him in the least. All that the preamble said was, "whereas it is expedient"—"therefore it is enacted." He then had recourse to the Statement of objects and reasons circulated by the Honorable Member for Madras with a copy of the Bill, and there he found that the state of the Police at Madras was considered most unsatisfactory, and that the inability of the present Police establishment at that Presidency to cope with the prevailing amount of crime, or to ensure protection to person and property, had latterly become more than ever marked and notorious. The present Bill then was introduced to remedy this state of things, and it was thought that the Police, proposed to be created under it, would be able to cope with crime, and to ensure protection to person and property. But what were the arguments adduced in support of the measure? What were the grounds on which its introduction was recommended? What reason had they for supposing that it would prove effectual for the attainment of the object in view? Let them look at the opinions which had been expressed by those who, from their position and experience, were the most competent to form a judgment on the subject. The balance of opinions would, he thought, be found greatly against the proposed measure, and, if tried by this test, prudential considerations would appear to be in favor of their staying the progress of the Bill at its present stage. He was prepared to admit that, in addition to the promoters of the Bill, whose opinions were of course entitled to great respect, there was one very high authority in favor of it. He alluded to the Honorable Member of Council on his left (Mr. Grant), whose sound judgment and practical ability must always command the greatest weight for every opinion expressed by him on any question connected with the Government of this country. Whenever he found himself differing from that Honorable Member, the impression forced itself upon his mind, that the Honorable Member must be right, and that he (Mr. Harington) must be wrong, and such would probably be the case now, and he might not have considered himself justified in addressing the Council on this occasion, were it for the many high authorities whom he found ranged on the opposite side. He held in his hand a letter which purported to have been lately

addressed by an intelligent native to the Honorable Member for Bengal, in which he found the opinion of His Excellency the Governor-General on this subject stated at great length. His Lordship said :—

"After giving the subject my best consideration, and carefully weighing the arguments which have been adduced on either side, I have come to the conclusion that the two offices, where now separate, should be reunited, and that the system which is found to work equally well in the Non-regulation Districts, in the North-Western Provinces, and in several districts of the Lower Provinces, should be uniformly adopted. It seems to me, speaking with sincere deference to the opinion of my Honorable colleague, Mr. Grant, that reason, no less than experience, points to the necessity of concentrating the whole executive power of the Government, in each district of Bengal, in the hands of one experienced man. We have the authority of Lord Dalhousie, after four years' experience of local administration, in favor of the measure; and we have the earnest and repeated recommendation of the Lieutenant-Governor on the same side. The system of separating the two offices seems to have been adopted rather on theoretical grounds, and in the hope that any change would conduce to the improvement of the Police, than from the experience of practical inconvenience from their union; though, if it had been otherwise, the previous system can hardly be said to have had a fair trial, seeing that it existed only a few years, and at a time when the chief energies of the Collector-Magistrates were taxed for the performance of the onerous duties imposed by the sudden and energetic enforcement of the resumption laws.

"I agree with the Honorable Mr Grant (His Lordship proceeded to observe) that a system of administration, which suits an uncivilized country, may not be adapted to one more advanced in civilization; but there still remains the question, whether the districts in Bengal, in which the offices have been divided, are in that advanced state of civilization which renders the division of magisterial and fiscal functions a preferable mode of local administration to that in which these functions are united, and whether there is such material difference in point of civilization between those districts and the districts in which no such division has taken place, or between those districts and all the districts of the North-Western Provinces, as to require a separate and more theoretically perfect system of administration. Judging from all the evidence before me as to the state of things in the Upper and Lower Provinces of the Bengal Presidency, I find myself constrained to answer this question in the negative. I think that, in Bengal especially, the efficient administration of the penal laws requires all the force and influence which the Government can bring to bear upon it, and that this force and influence will be increased by substituting, for the divided authority now partially existing in these provinces, that union of local control which, as it seems to me, is much better suited to the character and wants of the people. I do not think that the case would be met by raising the salaries of the Magistrates and reducing those of the Collectors, or by putting them upon an equality. An inexperienced Collector may be as mischievous as an inexperienced Magistrate, and it is not desirable that any man should exercise independent authority of any kind over a whole district until he is ripe for it. And even if experience could be secured in both officers, the division of authority is to be avoided rather than sought. As regards the people, I fully believe that what has been called the patriarchal form of Government is, in their present condition, most congenial to them and best understood by them; and as regards the governing power, the concentration of all responsibility upon one Officer cannot fail to keep his attention alive, and to stimulate his energy in every department to the utmost, whilst it will preclude the growth of those obstructions to good Government which are apt to spring up where two co-ordinate Officers divide the authority.

"Neither do I think that a parallel can be drawn between a Bengal Mofussil district and the Presidency Town of Calcutta in respect to a division of offices. In the former the Collector is and must be an Officer of high authority, whose relation to the Zemindars and to the rest of the agricultural community, in connection with the settlement and collection of the land revenue and the disposal of *quasi* judicial questions relating to it, must always be one of influence and power, and whose co-operation with the Magistrate it is most important to secure by the closest union. In Calcutta, on the other hand, the Magistrate, an Officer of long experience with an expensive and numerous staff of European and Native Police at his command, and assisted by Justices of legal attainments and practice, would derive no appreciable addition of power from being charged with the collection of petty ground-rents and the excise upon spirits, a duty entrusted to an Uncovenanted Officer, under the control of the Collector of the 24-Pergunnahs. Moreover, the concentrated wealth and civilization of the town of Calcutta are such as to require and support a more perfect division of labor in its local administration than any entire district or town of the Mofussil can be expected to claim, upon like grounds, for many generations to come."

The next opinion which he would read, was that of the present Lieutenant-Governor of Bengal, whose intimate knowledge of the natives of India and of the circumstances of the country, and whose large experience, derived from the various high and important offices which he had filled, gave a de-

gree of authority and a weight to his opinion which seemed to him (Mr. Harington) quite irresistible. Mr. Halliday in his well-known Minute on the Police of Bengal said :—

"There is, however, an opinion which has found favor with some persons of just weight and authority in matters of this kind, and which has indeed a certain plausibility which tends to recommend it to many, and especially to those whose experience, or whose mode of thinking has been derived from European rather than from oriental habits, against which I am specially desirous of raising my testimony in this place, the rather perhaps that in the days of my smaller experience, I myself have held and advocated the opinion which I now very heartily condemn. The opinion to which I allude is this, that the Magistrates of every degree should be debarred from all judicial power, and should have nothing but the executive duty of preventing and detecting offences, and that separate judicial functionaries should receive and try cases of every description committed to them by Magistrates of various degrees.

"It is one very serious objection to the scheme, that it will be very expensive. It is a scheme foreign and unintelligible to Asiatic notions, and altogether founded on European ideas and habits, going indeed, in its excessive provisions, to a degree even beyond any general European practice.

"I am very sure that our Mofussil administration will, *cæteris paribus*, be generally efficient, while it is certain also to be acceptable to the people, according to the degree in which it conforms to the Simple and Oriental in preference to the Complex or European model. The European idea of a Provincial Government is by a minute division of functions and offices, and this is the system which we have introduced into our older territories. The oriental idea is to unite all power in one centre. The European may be able to comprehend and appreciate how and why he should go to one functionary for justice of one kind, and to another for justice of another kind. The Asiatic is confused and aggrieved by seeing that this tribunal can only redress a particular kind of injury; but that if his complaint be of another nature, he must go to another authority; and to a third or fourth kind of judicature if his case be, in a manner incomprehensible to himself, distinguishable into some one kind of wrong or injury.

"Accordingly, not only in all our recent acquisitions, such as Scinde, the Punjab, Burmah, Nagpore, and Oude, but in most of those which date thirty or forty years further back, such as the Nerbudda Territories, Assam, Arracan, we have carefully framed our administration upon the Oriental plan, modifying it only when absolutely necessary to ensure real benefit to the people. And while Europeanized methods in our oldest territories have been notoriously unsuccessful, the result has, on the whole, been so decidedly successful in the newer districts, that no sound Indian Statesman would now dream of proposing for any new acquisition any other plan of administration. Now nothing can be more opposed to the Oriental plan of administration than the entire separation of judicial from executive duties, which is advocated by the over-much occidentalists to whom I have alluded. At the same time it is going backwards from the course which experience has been gradually forcing on our older territories since 1793.

"No one who is familiar with the state of the interior will deny that, amidst much that is good, our present system (that is in Bengal) is often marred by one or other, or all of the evils which I have above depicted; and these evils, whenever they occur, arise undoubtedly from the antagonism of locally opposed judicial and executive authority. But conceive this antagonism, not merely at each zillah station, but all over every district, and the antagonism in each case, not of two liberally educated Englishmen, but of two half-educated and Orientally civilized natives, and let those who know the country and people declare what would be the practical result. We may imagine the bickerings, crimination, and re-crimination, that would ensue. For, though under the greatest provocation, corruption is the last thing which a Native attributes to a European Judge or Magistrate, it is the first imputation which a Native casts on a Native, on great provocation, slight provocation, or no provocation at all. Thus, in too many instances, would Executive Officers account for failure by insinuations against the judicial department, and thus, as often, would the judicial functionaries resort by insinuations against the purity of the executive. At best all the difficulties and embarrassments which even now not unfrequently impede the administration, owing to divided authority, would be multiplied a hundred fold. If it were asked why crime had increased in a particular district, the Executive Officers would reply, because of the pertinaciously unreasonable acquittal of all our criminals by the judicial functionaries. If the judicial functionaries were in any way questioned for this result, they would answer, 'it is because of the negligence and inefficiency of the executive.' Nobody would be responsible. Power would be everywhere divided and everywhere contending against power. The administration of the interior would be torn in sunder, and the result would be good made bad, bad made worse, and confusion everywhere worse confounded."

Then they knew that the Honorable Member for Madras, who must be regarded as a very high authority in all matters relating to that Presidency, was strongly opposed to the measure, because he had told them so in the remarks which preceded his motion for the first reading of the Bill; and he believed the Honorable Member could likewise tell them that the measure was

no less at variance with the opinions entertained by a large proportion of the ablest and most experienced Members of the service belonging to the Presidency which he represented. The late Court of Directors of the East India Company had also admitted in one of their Despatches, that the principle of separating the judicial from the police functions of the Magistrate had been strongly opposed by men of intelligence and experience. The North-West and the Punjab had not yet spoken out publicly; but he had received several letters from gentlemen holding high offices in the North-West, from which, with the permission of the Council, he would read some extracts. The first of these letters was from Mr. Spankie, the present Judge of Saharunpore. This Officer was certainly not open to the charge which was not long ago brought against him (Mr. Harington) of being so wedded to the existing state of things, that he desired no change, for, if left to himself, he believed that Mr. Spankie would abolish the Civil Courts altogether, while they knew that he had lately recommended to Government that the thannah records in criminal trials containing the result of the preliminary investigation by the Police should be at once and entirely discontinued. Mr. Spankie said :—

"*Festina lente*—we are moving too fast again. What you tell me would be a sweeping innovation, not a wise and gradual reform. I would not separate the Police Powers from those of the Magistrate. The people do not want many masters, but one. That one should be a person of influence from position, experience, energy, and ability. My experience assures me that, if you had separate agencies, the people would be like sheep without a shepherd. Instead of providing one open channel of communication with them, you would practically leave them without any intercourse at all. As things are at present, the Magistrate's tendencies are rather to distrust his Police, and incline to the people under his jurisdiction. He is interested in the good conduct of his Police, but he is most interested in the well-being of his people. He knows their characteristics and the nature of the crimes they are likely to commit. From mixing with them in the interior, he knows the well behaved and the bad classes; and this knowledge gives him great aid in dealing with the Police. If he does his duty and is accessible, the people themselves will come to him for redress. His influence can be exercised, from his position, beneficially in matters of Police, affecting the zemindars, markets, fairs, religious observances, public health, and the like. There are no interests which clash with his—he cannot blame any party but himself if things go wrong. He is also in a position to train up good successors in his post. Alter the system, and what will you give in its stead? You must settle an European Superintendent in each district, probably a young Military Officer without any experience at all, or an old one, who knows nothing of Police, except from hearsay, or in a Cantonment Joint Magistracy, not the healthiest of experiences, as I can testify. You have not a sufficient number of Scinde or other good Police Officers with whom to commence the scheme here. The men whom you must select have not been for years mixing with the people as the Magistrates do. He has not the same influence from position, and he has not the same kindly tendencies towards the people. It is impossible that he should have them. He belongs to a commission, in the vitality of which he is intimately concerned. His inclination would be to support the Police and distrust the people, for which purpose his office has been created. If the people complained of his Police, he would (to reverse the picture as representing the Magistrate) distrust them *ab initio*—his Police, he would argue, are more likely to speak the truth, because they were specially raised to take the place of Police, who did not do so. If the Magistrate once commenced to hear complaints of the Police, the number of them would be legion. The Superintendent of Police would resent this. Perhaps two honestly inclined Officers from their very opposite interests would be involved, in repeated disputes. The general Superintendent in high authority would support his own men; if he did not, the system would not have a fair trial. The natural idea would be that the Magistrates looked upon it with an evil eye, and withheld cordial co-operation—such things have been said before.

"I do not think that the conduct of the Police during the rebellion should stamp them as bad. Far wiser and better men looked upon our cause as hopeless, and their falling away when a district went to pieces was nothing wonderful. We should regard the order and security which reigned during the last ten years in these Provinces, and not the failure of the Police in a time of general anarchy, when they merely followed the example of thousands bent upon upsetting a Foreign Government. It will be found that, in keeping order, in general duties of a Regular Police in the prevention of crime, we have greatly improved of late years. The better appointments, though still insufficiently paid, have been rendered more attractive by higher remuneration. There has been a closer arranged system of patrol on high roads and a better distribution of Police in the interior of districts, and, consequently, a great diminution of crime, irrespective of murder, the prevalence of which is capable of explanation

without reference to the Police. There is, too, I honestly believe, less corruption, though there is wide room for improvement in this respect.

"What do you propose now? To replace the Thannah Police with the Military? If so, how long will the Military character prevail? Who is to conciliate the towns or villages? Who to arbitrate between people coming to the Police Court with petty grievances like an honest and well disposed Thannahdar can do? Who will induce people to return to their homes and not carry idle complaints into Court, and so lose their time and labor? Who is to watch the conduct of the zemindars and other classes within the limits of a Thannah?—the havildar, who will be removed every three months? You will be compelled to have recourse to the same sort of agency you have now, but it will not be so well controlled, for it will be under authority, which it will more easily deceive, and which will not have the same power of rewarding honest and zealous service."

Mr. Martin Gubbins, one of the Judges of the Sudder Court at Agra, had written him a long letter very much to the same effect as the letter which he had just read from Mr. Spankie. This letter, should the Honorable Member for Madras succeed in carrying his motion, he proposed, with the permission of the writer, to print. No one who knew Mr. Gubbins, or who had read his very popular, able, and interesting work on Lucknow, in the memorable siege of which place, from the commencement to the close, he had played so conspicuous a part, earning for himself the character of a good and valiant soldier, and of a kind and hospitable friend to all whom it was in his power to aid, would look upon him as *laudator temporis acti* in the sense in which he (Mr. Harington) was supposed by some to be. In the last edition of his work, Mr. Gubbins, somewhat indiscreetly as he thought, and certainly not in very good taste, had called the Sudder Courts nuisances. As a Judge of one of those Courts, he (Mr. Harington) trusted that Mr. Gubbins would soon discover how little he knew of their real character when he called them bad names, and that in his own practice, at least, he would show that they could be just the reverse of what he had described them. The next letter which he had received was from an officer now holding the appointment of Magistrate and Collector in the North-Western Provinces, but who was formerly employed in the Punjab. He said:—

"All is here serene; if anything will operate to produce discontent anew, it will be the Military Police Bill. I am entirely opposed to the proposed scheme, which is the offspring of crude, ill-digested imaginations."

The last letter was from an officer who was formerly employed in Scinde, and afterwards he believed in the Punjab. He was subsequently transferred to the North-West, and for many years held the appointment, first of Magistrate and Collector, and afterwards of Civil and Sessions Judge in the Doab. On the annexation of Oude he was offered a high office in that Province, and he was now officiating as Commissioner of a Non-Regulation Province, so that he was an officer of very considerable experience. He said—

"I am glad to learn you are opposed to the proposed law for separating the judicial and police functions of a Magistrate; the more universal the powers of a District Officer, the more his resources for detecting crime and obtaining the co-operation of the agricultural community. Great will be the impediment to energetic administration, if the Police is not wholly under the district hakeem" [meaning the Magistrate].

He (Mr. Harington) believed that these letters expressed the sentiments of the great majority of the ablest and most experienced officers in the North-Western Provinces and in the Punjab at least, if not throughout India, so that they had opposed to the scheme of the Madras Government the late Governor-General of India, Lord Dalhousie, His Excellency the present Governor-General, the Honorable the Lieutenant-Governor of Bengal, the Honorable Member for Madras, the experienced and intelligent men alluded to in the Despatch of the late Court of Directors of the East India Company, the officers from whose letters he had read extracts, all practical men, and many others who were equally well qualified to give an opinion on the subject. But he was told that the system, now proposed to be introduced into the Presidency of Madras, had succeeded wherever it had been tried. He was told that it had succeeded in England; that it

had succeeded in the Presidency Towns of Calcutta, Madras, and Bombay; that it had succeeded in Bombay, and that it had also succeeded in Scinde. He did not think that it would be safe to travel all the way to England to learn what was the best system of Police management for India, or, perhaps he should rather say, all the way to London, for he was informed that in the rural Districts of England the Police, though nominally independent of the Bench of Magistrates, was in reality entirely controlled by them. With regard to the Presidency Towns he would only observe that their circumstances were so different from the circumstances of the Mofussil, that it did not at all follow that a system which might be very well adapted to them would answer equally well, or might advantageously be introduced beyond the limits of those Towns. In Bombay he believed that the Military Police were subject to the control of the District Magistrate, but whether such was the case or not, he asked for proof that the system had succeeded there and in Scinde; he asked for figured statements extending over a certain number of years prior to and after the introduction of the system, and showing the number of crimes ascertained to have been committed—the number of persons apprehended out of the number supposed to have been concerned in the offences reported—the number of persons committed and the number of persons acquitted—the amount or value of the property ascertained or reported to have been stolen, and the amount or value of the property recovered; let them be furnished with a return containing these particulars, and they would then be able to judge for themselves whether any and what degree of success had attended the introduction of the system at Bombay and in Scinde. But he would ask, if the system had really succeeded so well in Scinde, how came it to pass that it was not introduced into the Punjab by Sir John Lawrence before he left the country. Sir John Lawrence must have carefully watched the working of the system in Scinde; he could not have been ignorant of the success which was declared to have attended its introduction into that Territory, and they all knew that he was about the last man in India to have refused to introduce the system into the Punjab simply because he could not claim the credit of having originated it; yet he had gone away leaving the Police and the judicial functions in the Punjab to be exercised by one and the same functionary according to the system originally adopted. They had been told again and again that in so far as this country was concerned the Punjab system approached nearer to perfection than any other system in force in the British Territories in India; now what, he would ask, was the distinguishing feature of that system? why, the concentration of all power in one officer. Such being the case it was scarcely necessary for him to say, that if this Bill were extended to the Punjab it would inflict a heavy blow upon the system now in force in that Territory. But he might be asked, did he approve of the Collector and Magistrate being also Civil Judge? To this question he would give an answer in the negative, first, because there was no such connection between the office of Judge and the offices of Magistrate and Collector as to render it desirable that they should be united in the same functionary; and, secondly, because the duties which the Magistrate and Collector had to perform were generally of so urgent and pressing a nature that they could not be put aside or postponed without very serious inconvenience, and the consequence was, that where, as in the Punjab, the Collector and Magistrate was also Civil Judge, to quote words which had been imputed to a distinguished Punjab officer, "the civil business got only the fag end of the district officer's time." He could easily believe that such must be the case, for he had been long enough in India to recollect the time when the offices of Judge and Magistrate were united in one officer, and the consequence was that the civil work in those districts in which the criminal duties were heavy was almost entirely neglected; month after month the Judge and Magistrate was obliged to account for his short comings in the former capacity by referring to the heavy duties which had devolved upon him in the latter capacity, until at last the separation of the two offices was

Mr. Harington

forced upon the Government as a matter of necessity and of justice to the suitors in the Civil Courts; and, unless he was greatly mistaken, a similar separation of the two offices would at no distant date become necessary in the Punjab: such also seemed to be the opinion of many experienced Punjab Officers. There was not the same objection to the union of the offices of Magistrate and Collector in one functionary, provided, of course, that he had a sufficient staff of subordinate officers to admit of all cases arising in the two departments being disposed of with proper despatch. This had been the case for some years past in the North-Western Provinces. The result was that the Magistrate and Collector, not being overburthened with details, was able to exercise a careful and vigilant supervision and control over the whole district and over all the officers subordinate to him, particularly in the department of Police, and they had the testimony of Mr. Spankie to the great improvement which had taken place in that department previously to the breaking out of the mutiny. The union of the offices of Magistrate and Collector, which had now existed in the North-Western Provinces for upwards of a quarter of a century, had his most hearty approval, but he felt satisfied that much of the utility and advantage of that union would be lost if the Police functions were taken away from the Magistrate and vested in an independent officer. He might be told that the present highly respected and deservedly popular Lieutenant-Governor of the North-Western Provinces, Mr. Montgomery, had become so convinced of the great superiority of the system which it was proposed to introduce into Madras over the system now in force in that Presidency, that he had ordered its introduction into Oude during his short but successful administration of that Province. But surely it was too soon to educe any argument in favor of the system from what had been done in Oude beyond what was to be derived from the fact, that Mr. Montgomery, after having for many years successfully administered a very different system in the Punjab, had seen reason to change his opinion, or, at any rate, to introduce a different system of Police administration into Oude from what was followed in the Punjab. Whether he had acted judiciously in this respect was a question which time only could determine. As yet the introduction of the system into Oude must be regarded as purely experimental, and to those who were so anxious to obtain a solution of the difficult question as to what was the best system of Police for this country, he would suggest whether it would not be better to await the result of the experiment now being tried in Oude, and to defer the extension of the system to Madras or elsewhere until it had been a sufficient time in operation in Oude to admit of an opinion being formed as to the advisability or otherwise of carrying it further. He might also be told that Mr. Wingfield, the present Chief Commissioner of Oude, was in favor of the measure introduced by his predecessor. If such was the case all he could say was that his conversion to the system had been as sudden and unexpected as Mr. Montgomery's had been, for in a paper written by Mr. Wingfield only in December last, he (Mr. Harington) certainly understood him as expressing himself strongly in favor of the concentration of all executive, judicial, and revenue powers or functions in one officer. This paper had been printed, and a copy was in the hands of Honorable Members.

With regard to that part of the Bill before the Council which proposed to vest the administration of the Police throughout Madras in an officer to be styled the Chief Commissioner of Police, he would observe that this centralization of Police powers in a single officer had already been tried in Bengal. For many years both in the Lower and Upper Provinces there was a Superintendent of Police, and the office was considered one of so much importance that it was always held by a picked Member of the Civil Service. After a full trial, however, the office was abolished, he supposed, in consequence of its not answering the end contemplated in its creation, and he saw no prospect of its succeeding better at Madras. The opinions which he had read contained such a full and clear exposition of the

advantages which resulted from having at the head of the Police in each District an officer of some standing uniting in his own person the functions of Magistrate and Collector, and of the evil consequences which might be expected to result from transferring the Police functions now vested in such officer to comparatively young and inexperienced Military men, acting independently of the Magistrate, and in no way subordinate to him, that he would not further occupy the time of the Council, upon which he had already trespassed too long, with any observations of his own Suffice it to say that he entirely concurred in those opinions, and he should have been disposed to meet the motion of the Honorable Member for Madras with a direct negative, but looking to the labor and time which had been bestowed on the preparation of the present Bill, and to the anxious desire expressed by the Government of Madras for its adoption, he thought that the subject might fairly be regarded as deserving further and fuller consideration, and he proposed therefore to move, by way of amendment to the motion of the Honorable Member for Madras, that this Bill be read a second time this day four months, that the Bill be published for general information, and that the Clerk of the Council be directed to address the Government of India and express the wish of the Legislative Council that they would call upon the several local Governments to obtain and transmit the opinions of the several European Judicial and Revenue authorities upon it He observed that this was the course pursued in respect to the Bill relating to Oaths and Affirmations, which was also brought in by the Honorable Member for Madras, and he thought that it might be followed with equal advantage on the present occasion Before resuming his seat he wished to make one or two remarks on the answers given by the Honorable Member for Madras to the questions which he (Mr Harington) had put to him In reply to the first question the Honorable Member for Madras had stated that it was the intention of the Government of Madras, even after the passing of this Bill, that the Magistrates should continue to be held responsible for the maintenance of the peace of their districts, but he did not see how this responsibility could with any fairness be thrown upon the Magistrate, seeing that, according to the provisions of the Bill, he was to have no control whatever over the instruments, by whose means crime was to be repressed and order maintained He had not overlooked the Sections relating to the Village Watchmen, to which the Honorable Member for Madras had referred in his reply to the fourth question put to him, but he had found it difficult to believe that it was really intended to place the Village Chowkeedars entirely beyond the control of the District Magistrates, he certainly thought that the Right Honorable the Governor of Madras was quite right in the opinion originally entertained by him, that "the plan of leaving the Village Police entirely under the local authorities, and ultimately under the Collector, was judicious and almost necessary under the peculiar circumstances of society in India," and he could not understand on what ground His Lordship had since changed that opinion He begged to thank the Council for the hearing they had been so good as to give him, and he would now make his motion for the postponement of the second reading of the Bill, with the object stated

MR LEGEYT wished to say a few words in support of the second reading of this Bill

He hailed its appearance with very sincere satisfaction and thought the authorities of Madras had entitled themselves to the thanks of all India for having brought forward a measure so important, so comprehensive, and so complete as this Bill appeared to him to be

If he did not entirely recognise the necessity of the large Military constabulary constituted by the Bill, he found in it elements of a Police law which he trusted would eventuate in a total change of the existing character of Indian Police, and go far to place in the hands of Government a powerful and effective engine for the good government of the country, and to give adequate protection of life and property to the people. Although he

believed the proposed system of Police had not yet obtained the universal suffrages of the various public functionaries who had power to deal with Police questions, yet this system certainly came before the Indian public with this great recommendation, that in the various parts of the world in which it had been tried, he believed it had succeeded. It was first introduced in India, he believed, in the Presidency Town of Bombay about the year 1833-34; subsequently it was established in Calcutta, and in 1856 an Act was passed for the three Presidency Towns He believed he was quite right in saying that the system had worked well in these Towns.

In the Presidency of Bombay, the Police, by the Regulations of 1827, was placed under the Collector and Magistrate of the Zillahs subject to the general control of the Sudder Foujdaree Adawlut. The law, Regulation XII. 1827, provided that the Collector should also be Magistrate, and as such have the charge and management of the Police, so that the primary duty of the chief civil functionary in a Zillah was Revenue, the second Magisterial, and the third Executive Police. As might be expected, the Police did not succeed under this triple arrangement, and things had gone on from bad to worse, till in 1847 Sir George Clerk, then Governor of Bombay, resolved on re forming the Zillah Police. He selected one of the largest and most troublesome Zillahs (Belgaum) for the experiment; he began wisely, as events had proved, with the Village Police. An Officer was specially appointed to re-organize this body, which was completed in about two years. It was extended to other Zillahs, and in 1854 a Commissioner of Police was appointed. The law of Bombay still existed, by which the Magistrate was still the head of the Zillah Police, but since the appointment of the Zillah Superintendents, Magistrates had, under the instructions of Government, power to interfere with the details of the Executive Police Fears were at first entertained that collisions and heart burnings would ensue, but happily common sense and anxiety for the common weal had generally prevailed, and the system had worked harmoniously The Honorable Member for the North-Western Provinces had demanded statistics to satisfy him of the success of this measure He (Mr LeGeyt) was glad to be able to give this information. He had looked into the returns of crime published in the Presidency of Bombay during the years 1845, 1846, and 1847, the three years immediately preceding the reform. He had also examined the returns for the years 1854, 1855, and 1856, which were the latest received He found the number of offenders apprehended in the three former years was 199,811 and the convictions 104,256. In the three latter years the number was 171,000 apprehended and 118,730 convicted, showing a great decrease of accused persons and a great proportionate increase of convictions. He also found that in the former three years the persons accused of crimes attended with violence numbered more than 14,000, in the three latter years these had decreased between 800 and 900 He thought he had a right to claim credit for the Police in this improved state of things. He mentioned these particulars to show that, where the principles of the Madras scheme had been tried, they had succeeded. He believed he might also quote the state of Police in Scinde as another instance of good obtained from this system of Police. He had heard a great deal about one common chief in every District—a patriarchial rule is most consonant with Asiatic feelings and habits. It was his belief that no Police worthy of the name could be at all in consonance with Asiatic feelings and habits, though he believed no people would more gratefully appreciate a good and sufficient Rural Police than the well-disposed portion of the native community. The Police had hitherto been an accomplice and shield to crime, let it be so no longer, and if the plan proposed in the Bill were conceded, it would assume a totally different character.

MR. RICKETTS said, the principles involved in this Bill were the separation of Police duties from fiscal duties, and the organization of a Police partaking in its discipline and training of more of the Military character than they have been accustomed to in the peace-

able parts of the Empire. Hitherto in Madras, Revenue, Magisterial, and Police duties had been in the hands of the same officers. The Madras Government, seeing the error of their ways, had made a long step in the right direction, and they must be greatly surprised to find their measure opposed in this Council. Wicked people had been in the habit of speaking of Madras as the benighted Presidency, but now that they had stepped well out of the fog and the mire, they ought to be welcomed by reformers on this side of India. They had on their side in this move a great authority. Mr. Montgomery, with all the predilections which he must naturally have for the system observed in the North-Western Provinces and the Punjab, had quite changed his opinion, and was entirely in favor of separating Police from Magisterial duties. He wrote :—

"With the multifarious duties entrusted to a District Officer, experience has taught the Chief Commissioner that the organization and efficiency of the Police cannot properly be attended to. In no part of India has the experiment been more fairly tried than in the Punjab by officers who have distinguished themselves for untiring zeal and exertion, and if the Chief Commissioner, when employed in that Province as Judicial Commissioner, perceived defects to exist, he feels sure that elsewhere perfection in that system cannot be attained. The opinion of the Honorable Court of Directors, supported by the experience and representations of the Governments of Bombay and Madras, are all in favor of separating the Executive Police from all connection with the Magisterial branch of the administration. There can be no possibility of a criminal being prejudged before his trial, or of a case being got up, and carried through to conviction by the intrigue of the Police. Under the former system, the District officer had to perform multifarious duties. He first of all appointed his own Police, he watched crime and directed his constables to apprehend a suspected person, he collected through them the evidence against the accused, and then he sat on the bench to try impartially the case. That an English Judge ever descended to countenance the concoction of a false case, or that he willingly permitted his anxiety to arrest the criminal to bias his mind against the prisoner at the bar, the Chief Commissioner would be loth to believe, but he is fully convinced that many a case has been fabricated and brought before the Magistrate in a form that would ensure conviction through the villainy of the Police and the intrigues of the Court officials. To separate the connection between these two branches must have a good effect in breaking the link and in throwing obstacles in the way of successful intrigue."

But there was a still higher authority in favor of the principle of the Madras Bill. The Court of Directors, in their Despatch of the 24th September 1856, wrote :—

"To remedy the evils of the existing system, the first step to be taken is, wherever the union at present exists, to separate the Police from the administration of the land revenue. No native should be trusted with double functions in this respect. We do not see the same objection to the combination of magisterial and fiscal functions in the hands of our European Officers, because we can better hope they will not abuse their powers, and because by employing the Collector as the principal Magistrate of each district, we are able to obtain for the chief administration of the penal laws a more efficient and especially a more experienced class of officers than would otherwise be available. This is an important consideration which ought never to be lost sight of. Nevertheless it is still more important that the officers who control the Police should be required to undertake frequent tours of their districts, and they must not be so burdened with other duties, such as the preparation of forms, returns, and statements, as to be deprived of the time sufficient for this essential purpose The supervision exercised by intelligent officers who are accessible at all times, is the most certain and effectual check to every abuse of authority by subordinate servants of Police.

"In the second place the management of the Police of each District should be taken out of the hands of the Magistrate (who would thus have more time for exercise of the double functions adverted to in the former paragraph), and be committed to an European Officer with no other duties and responsible to a general Superintendent of Police for the whole Presidency."

In all this he heartily concurred. There might be some of the details of the Madras measure admitting of improvement, especially the extreme centralization and the placing the whole Presidency under one Commissioner of Police ; but this might be remedied in Committee, if the Council would allow the Bill to be read a second time.

MR. CURRIE said that, if a vote in favor of the second reading of this Bill could be held to pledge the Member so voting to a concurrence in the principle of the measure as applicable to the Bengal Presidency, he should be as little disposed as the Honorable Member for

the North-Western Provinces to give such a vote. But he did not view the subject in this light. The circumstances of Bengal and Madras were very different. It was agreed on all hands that in Madras a reform of the Police was urgently required. A plan had been framed which was most strongly recommended by both the local Government and the Sudder Court, and had received the approval of the Home Government. He thought that the Council could not refuse to receive and give the fullest consideration to this plan, and therefore, without at all pledging himself to an approval of the principle of the Bill as generally applicable to all the Presidencies, he should vote for the second reading. In the Districts under the Bengal Presidency a totally different plan of reform had been sanctioned by the Home Government, and was now in course of introduction, and he did not apprehend that the progress of that measure would be at all affected by any thing which might be determined on for Madras.

THE VICE-PRESIDENT said, in dealing with this Bill, it was to be remembered that they could not boast that a perfect system of Police had been discovered in any part of India. He might go farther and say that the Police in India was a subject which stunk in the nostrils of the public. Mr. Montgomery had recently introduced a new system in Oude : the Bombay Government had lately altered theirs ; and the Madras Government now asked to have their system changed also. If the Honorable Mover of the amendment could point anywhere to a system of Police which was based upon a good principle, that would be a reason for rejecting this Bill and telling the Madras Government that they should adopt that system. But if it appeared that there was no such system in any part of India, and that the Madras Government had maturely considered the subject, and desired to try the new principle, it would be ungracious to refuse them, and to postpone the second reading of the Bill they had sent up for four months, for the purpose of taking the opinions of old and experienced officers in other parts of India, not as to what would best suit their own localities, but as to what would best suit the Presidency of Madras. As the Honorable Member for Bengal had said, the circumstances of Madras were quite different. There, if anywhere, there seemed strong reasons for severing the functions of officers of Police, at any rate, from those of officers of Revenue. In Madras the revenue was collected directly from the Ryot : in Bengal it was collected, under the permanent settlement, from Zemindars.

With regard to the details of the Bill, he would remark that many of its Clauses seemed to be designed more for the Town than the Rural Police. One of these Clauses was not very happily expressed, for it gave Police officers the power of omnipresence. The Clause provided :—

> "Every Police Officer shall, for all purposes in this Act contained, be considered to be on duty at all times and in all places."

SIR JAMES OUTRAM said, he had purposed to offer some remarks in support of this Bill. But being satisfied from what had passed that its second reading would be allowed, it was needless for him to take up the time of the Council on this occasion. He should content himself therefore with placing before them the scheme of Police lately introduced into Oude by Mr. Montgomery, which, as nearly analogous to what was proposed for Madras in this Bill, might be useful for them to consider before the third reading, and which he would move might be printed.

MR. PEACOCK said, after the very full discussion which the question had undergone, he would not have troubled the Council with any observations, had not the principle involved in it appeared to him to be most important. The Honorable Member for the North-Western Provinces had read certain letters from functionaries in the North-Western Provinces opposed to the measure, but he (Mr. Peacock) did not see why, in consequence of these opinions, the Council should delay the second reading of the Bill for three months, in order that the opinions of other functionaries, who thought in the same way, might be collected. He, for one, could not vote for the postponement of the Bill, because his mind

had already been made up, that the principle upon which the Bill was based was a very correct one. At present the functions of Magistrate and Collector were united in one set of Officers, and not only was this system contrary to theory, but he believed it had also been found unsound in practice. The Honorable Member had not shown that it had worked well in practice. If the Honorable Member had shown that it had worked well in Madras, he might very reasonably have asked—"Why demand a change?" But it was known that it had not worked well in Madras. The Madras Government was of opinion that it had worked ill, and therefore asked for a change as a matter of reform. The Honorable Member had read the Minute of the Lieutenant-Governor of Bengal in 1856, in which His Honor changed the opinion on this subject which he had given on a former occasion. (Mr. Peacock here read the passage which Mr. Harington had quoted.) This, as the Lieutenant-Governor admitted, was a change of an opinion which he had expressed before in a Minute which he wrote in the year 1838, on the subject of the Police in Bengal. In that Minute, after having given the subject his full consideration, he made the following summary of the principal alterations which he either proposed or concurred in with the other Commissioners:—

"To dissever the judicial from the executive functions of Magistrates, and to vest the former in Civil and Criminal Judges and Sudder Ameens, and the latter in the Officers of Police.

"To take into the hands of Government the funds now applicable for the payment of Village Police, and adding to them the amount now expended on the Police, to organize a complete and connected body of Police officers, under the control of a Superintendent General."

The Lieutenant-Governor therefore was of opinion at one time that the system did not work well in Bengal. He had since changed that opinion; but at present the Council was considering the case not of Bengal, but of Madras. Did it appear that persons in Madras obtained relief or redress when they applied to Officers who were vested with both Police and Revenue functions? The Commissioners appointed to enquire whether torture did exist in the Revenue and Police Departments had come to the conclusion that it did. They said:—

"It would seem not only plausible but reasonable to look for such a remedy in the separation of the Revenue and Police functions; and it is to this that we venture to draw the attention of Government. We abstain from offering any direct or positive opinion upon the subject ourselves, because it does not fall within the immediate sphere of our enquiry: the expediency of this measure may be regarded as a separate question, which might form the subject of a totally distinct investigation; and certainly we should be desirous of sifting the matter much more fully than we have had any opportunity, before pledging ourselves to any confident determination regarding it. Much doubtless is to be urged on both sides. We should require to compare the different systems as tried in Madras before and since the laws of 1816, to ascertain how the two principles work in Bengal, Bombay, and the North-Western Provinces. We know that in Mysore there is scarcely a third of the European agency employed in the districts of Madras; that the Superintendent of a Division has not only the work of a Madras Collector, but much of that of the Civil and Criminal Court, with the power of presiding at trials in capital cases; yet if it should be found that there crime is more rigorously repressed, litigation less uncertain and tedious, the revenue more readily realised, and the country on the whole better managed than in our oldest possessions, this alone must make us pause and consider deeper as to a remedy which seems to promise much from its apparent applicability to the evil and its causes; yet it appears to us worthy of the fullest consideration, since the disjunction of the Police and Revenue authority of the native servants would break the neck of that power which is wielded by them with such terrible force and concert. It is the union of the two duties which gives them their principal power, and presents a tempting facility for abuse."

The Madras Government, having this Report before them, had recommended the change in the existing system, which was proposed in the Bill before the Council, and he saw no reason why the Council should refuse to read the Bill a second time now, when the change which they proposed was supported by theory, and the system which now existed had been shown to be highly injurious in practice.

When these Police Officers, whose duty it was to protect the people from injury, were also employed in collecting revenue, and in that capacity were guilty of torture, as represented, it was not un-

reasonable for the Madras Government to ask the Legislature to separate the two functions, and not allow Revenue Officers to discharge Police functions.

He would not trouble the Council with any further extracts; but it appeared to him that, when the Madras Government had taken into consideration this Report, and proposed a new system for the adoption of the Council, it was not for the Council to say—"We reject your recommendation, and postpone the consideration of the Bill until four months, in order that we may ascertain what public functionaries in the North-Western Provinces, or public functionaries all over India, think about it." He was very sorry to trouble the Council at any length; but he could not help remarking that in a minute recorded by the Honorable Member of the Supreme Government to his left (Mr. Grant) on this subject, occurred the following observation in reference to a passage from Hansard:—

"I find that the union of the powers of Magistrate with those of Collector was strongly animadverted upon by several of the speakers, as one of the causes of the prevalence at Madras of Torture for the realization of Revenue; and that this union was defended by none. I may fairly rely on the tenor of the speeches of the Noble Lords who spoke on that occasion, as showing how the highest English feeling regards the question I am discussing; and as an argument to be weighed even by those who take a different view from mine on the abstract question."

With all this before them, the Council would not be justified—it would not be fair to the Government of Madras—if they did not come to a conclusion as to whether they should adopt the principle of this Bill or not. He for his own part was prepared to adopt it. He approved of the principle which separated Police from Revenue functions, and should vote for the second reading of the Bill to-day.

MR. FORBES said, that the question now before the Council was should the second reading of this Bill be postponed for four months, in order that the opinions of all the officers of the several Governments should be obtained upon the principle of it? and to that question he desired to be allowed to say a few words in explanation of the vote he intended to give, because, as he was known to disapprove of the principle of the Bill, it might be thought that he would support the motion, in the hope that the result might be adverse to the Bill, while he intended to vote against it.

It was his opinion that the result of the motion, if it were carried, would be that the Council would, four months hence, be in precisely the same position in which they were at present. He had no doubt that the opinions of many able men would be recorded in favor of the principle of the Bill, and he had as little doubt that the opinion of many able men would be recorded against it, so that at the end of the four months the Council would be no nearer to a settlement of the question than they were at present.

On introducing this Bill, he had read an extract from a Despatch from the Honorable Court of Directors, which, as it was not long, he would, with the permission of the Council, now read again:—

In this Despatch, No. 13 of 1857, the Honorable Court in paragraph 4 said:—

"You are probably aware that the principle which you so strongly advocate of separating the judicial from the Police functions of the Magistrate, has been as strongly opposed by men of intelligence and experience. The question has been fully and ably discussed on both sides. A satisfactory solution of it will best be obtained by a practical application of the two systems in different localities."

It was the wish, therefore, of the Honorable Court, that the experiment should be tried, and if this were the case, it appeared to him, that the sooner it was tried the better. On this ground he should vote against the motion of the Honorable Member.

Before he sat down he would say one word in explanation of that part of the Bill which had been referred to by the Honorable and learned Chief Justice as requiring omnipresence in a Policeman.

The expression used, namely that a Policeman was to be considered as on duty at all times and in all places, was perhaps an unfortunate one, and it might be amended in Committee; but the meaning was only that no Policeman should be able to decline to give his ser-

vices or assistance when called on, under the excuse that he was not on duty—He was to be bound by law to act in his capacity as a member of the Police force whenever he might be called on.

MR. HARINGTON said, after the opinions which had been expressed by Honorable Members, he would not persevere in his motion. He was reluctant to trouble the Council with any further remarks, but in reference to what had fallen from the Honorable and learned Member of Council on his left (Mr. Peacock), on the subject of the inefficient state of the Police in the Presidency of Madras, which showed how necessary it was to make some change in the present system, he must say that he did not think that system had had fair play either at Madras or in Bombay. In both places where the offices of Magistrate and Collector were united, he believed that the officers holding the appointments were too much burthened with details, and the consequence was they were not able to devote that amount of time and attention to the Police which was absolutely necessary to secure efficiency in that department. The same was formerly the case in the North-Western Provinces, but of late years the Magistrates and Collectors in those Provinces had been provided with a large staff of subordinates, which enabled them to confine themselves chiefly to the important duty of supervision and control, and to the improvement of the Police whose conduct was brought under their notice in various ways. He thought he had stated that, whatever objections there might be in theory to the union of Police and Judicial functions in the same officer, it had certainly worked well in practice in the North-Western Provinces: he said this not as the result merely of his own experience and observation—for it was many years since he held the appointment of Magistrate and Collector—but on the authority of Mr. Spankie, whose letter he had read, and of other officers of experience. He had no doubt the system would work equally well at Madras and elsewhere if it only had fair play.

He quite agreed in all that had been said of Mr. Montgomery. He had the highest respect and esteem for that officer, but he could not overlook the fact that Mr. Montgomery had himself for many years successfully administered the system about to be superseded in Madras, first as Magistrate and Collector in the Regulation Provinces, and afterwards as Judicial Commissioner of the Punjab, and that Sir John Lawrence, than whom there was not a more practical man in all India, had not considered it advisable to introduce the proposed system into the Punjab, notwithstanding the success which was declared to have attended its adoption in an adjoining territory. He regarded this as a most significant fact. With respect to the Despatch from the late Court of Directors of the East India Company, from which the Honorable Member of Council opposite (Mr. Ricketts) had read extracts, he would only say that a later Despatch from the Honorable Court showed that their minds were not made up on the subject, though they wished that the system of separating the Judicial functions of the Magistrate from his Police functions should be introduced experimentally into the Madras Presidency. But the experiment was being tried in Oude. It was being tried there under most favorable circumstances, Major Bruce, an old and experienced officer, being at the head of the Police, and the Chief Commissioner being also, it was stated, favorable to the measure; and it certainly seemed to him, as he had already said, that before extending the system further it would be better to await the result of the experiment in Oude. With these remarks he would, with the permission of the Council, withdraw his motion.

MR. HARINGTON then, with the leave of the Council, withdrew his Motion.

MR. FORBES' Motion was then carried, and the Bill was read a second time.

MUNICIPAL ASSESSMENT (BOMBAY).

MR. LEGEYT moved the second reading of the Bill "to amend Act XXV of 1858 (for appointing Municipal Commissioners and for raising a fund for Municipal purposes in the Town of Bombay)."

MR. CURRIE said, there was one provision of the Bill which seemed to him to involve a question of principle, and upon which he wished to make a remark. He was the more desirous of taking this opportunity of doing so, as he would not be here when the Bill came again before the Council in Committee.

The point to which he referred was in Section IV, where it was provided that, when any article on which the town duty had been levied, "being the property of Government, is re-exported or is issued from any Government Depôt at Bombay for the use of the Indian Navy, or *for any other Government purpose*, the whole of the town duty shall be remitted." The words to which he took exception were "for any other Government purpose." It was quite right that the duty should be remitted on articles re-exported, and on articles issued for the use of the Indian Navy; but he apprehended that some part of the timber, for instance, imported by Government, might be issued for the construction and repair of Government buildings; and as Government buildings were liable to the house rate, the materials used for their construction or repair should be liable to the town duty. This would seem to be the view of the Bombay Government, for they asked only for the remission of the duty on articles issued for the use of the Navy.

He had, of course, no intention of interfering with the second reading of the Bill; but he had thought it right to call attention to the point which he had mentioned.

MR. LEGEYT said, he concurred in the remarks made by the Honorable Member, and would propose an alteration to the purport suggested by him when the Bill came under the consideration of the Select Committee.

MR. PEACOCK said, Section III of the Bill provided that the Municipal Commissioners might, at their discretion, compound for any period not exceeding three years, for a certain sum in lieu of town duties. He would not oppose the second reading of the Bill; but it appeared to him that this Section was very inappropriate.

MR. LEGEYT said, he would take a note of this objection also, and consider it in Select Committee.

The Motion was then put and carried, and the Bill read a second time.

CIVIL PROCEDURE.

On the Order of the Day being read for the recommittal of the Bill "for simplifying the Procedure of the Courts of Civil Judicature not established by Royal Charter," the Council resolved itself into a Committee for the further consideration of the Bill.

MR. RICKETTS said, he now begged to move the amendment, of which he had given notice. His object was to prevent the abolition of written pleadings in the Courts. He based his proposals on the following passages of the letter from the Sudder Court:—

"We think, therefore, that it would be preferable to adhere to the present system of written pleadings, aided by the oral examination of the pleaders, or, if necessary, the parties to the suit. By the former documents the Lower Courts would be led naturally to perceive at once the real issues in the case, and by the latter statements they could supply any thing which may be deficient in the pleadings themselves.

"The written verified statements recognized by the Code may be at variance with the oral statements, and be consequently superseded, and the oral statements may be drawn up so confusedly as to leave the Appellate Court in doubt whether the real issues in the case, as between the parties, have really been settled by the Lower Court or not. When this is the case, the Appellate Court will have no written document of an unquestionable character to which it can refer to ascertain this point, and in its absence justice is most likely to miscarry.

"It may be objected that the difficulties raised above are speculative difficulties, and may never occur in practice. It may be so, and the Court would be happy to think it likely that they were in error in suggesting the probability of their happening; but, guided by the experience which the Court has of litigation in this country, they desire to put it emphatically on record, that no system of procedure can in this country be entirely satisfactory, which does not embody the principle of written pleadings."

It was to be remarked that it was not a mere matter of opinion whether the system proposed was a good system or a bad system. It was a matter of fact. The Court said, whether the system be a good one or a bad one, it could not at present be carried out, and he believed them. With such pleaders

and with such Judges as they were obliged to employ, the success of the scheme appeared to him impossible. They were obliged to employ European Judges who had had little personal experience, and they were obliged to employ Native Judges who had had no practical experience at all. The Judges who submitted this letter to the Council were many of them men of great experience, thoroughly acquainted with the character and efficiency of the subordinate Judges, European and Native; and they would not have given the decided opinion he had just read, had they not been quite assured that the measure proposed was unsuited to the condition of the Courts. The Council were aware that in the Code of Procedure prepared by Messrs. Harington and Mills, written pleadings were retained. Yielding to the opinion of Her Majesty's Commissioners, the Honorable Member for the North-Western Provinces agreed to the provisions inserted in the Bill; but he (Mr. Ricketts) knew it to be his opinion that written pleadings, shortened and regulated as they might be under the direction of the Sudder Court, were indispensable to the due administration of justice in their Courts, and he was prepared to support the amendment, which he now begged to submit to the consideration of the Council. Should it be rejected, he felt quite sure that the great work now at length completed would fail to satisfy any classes. Before long a revision would be called for from all parts of the country. The industry and learning which had been brought to bear on the work might command admiration, but before long all would lament their ignorance of the real wants of those who had to seek justice in their Courts. With these remarks he begged to move that the following new Section be introduced after Section XXVI:—

"If the claim be for immoveable property, or for moveable property exceeding in amount or value the sum of five hundred Rupees, the plaint, in addition to the particulars specified in the last preceding Section, shall state all material facts and circumstances required to elucidate the claim without argument or repetition."

THE CHAIRMAN said, he was opposed to the amendment. He thought it would entirely alter the system which the new Civil Code intended to introduce, and would not secure the object which the Honorable Mover had in view—namely, a clear and satisfactory elucidation of the issues. He remembered that, in one of the debates on the Mofussil Small Cause Courts Bill, his Honorable and learned friend to the right (Mr. Peacock) produced a nuttee, and showed clearly from it that the system advocated by the Honorable Member (Mr. Ricketts) was not suited to the inferior class of Judges, for whom his amendment was designed. The real question in the case set out in the nuttee was, whether a party had executed a mortgage to another. Upon that question a long pleading was put in, stating all sorts of facts; and on that pleading the Moonsiff stated one of the issues to be, whether one of the parties did not go to a certain house and assault a woman with a felonious intent! If the parties had come into Court and told their own story, the Moonsiff would have taken down the only real issue—namely, whether, on a certain day, A had executed a mortgage to B.

The Honorable Mover of the amendment had referred to pleadings in England. No doubt, originally, there were oral pleadings in England; but it was afterwards deemed more convenient and cheap that the pleadings should be prepared out of Court. In the English County Courts the system was very much what the system in the Small Cause Court here was. A summons was issued, and the defendant appeared upon it and pleaded orally. Where a set-off was claimed, notice was given to the plaintiff; but otherwise there were no written pleadings at all.

MR. CURRIE said, he quite agreed in what had fallen from the Honorable and learned Chief Justice. It appeared to him that the amendment struck at one of the fundamental principles of the Bill, and he doubted whether such a question ought to be entertained in the stage at which the Bill had now arrived.

The subject of written pleadings had been very fully considered by Her Majesty's Commissioners; they had given the preference to oral examinations, aided, when necessary, by written statements, and had framed their rules of

procedure on this principle. Their reasons for having done so were stated in the notes to the Code. He would not occupy the time of the Council by reading them, but with reference to what had been said he would just observe that the Commissioners quoted the experience of the County Courts in England in support of their opinion for discontinuing the practice of written pleadings. The Code having been framed upon this principle, it appeared to him that, if any Honorable Member considered it objectionable, he ought to have brought forward his objection on the motion for the second reading of the Bill, or when it first came before a Committee of the whole Council. The Honorable Member said that he based his objection on a letter from the Sudder Court. But then why had the Sudder Court not stated their views before? Had they held these opinions all along, or had they formed them in consequence of some new light that had broken in upon them?

When the Report of Her Majesty's Commissioners was received, the Court was called upon to express their sentiments upon it. In consequence of that requisition, a letter had been written by the Registrar of the Court, and Minutes had been recorded by the Judges individually.

[MR. CURRIE here read extracts from the letter and minutes to show that the principle adopted by the Commissioners had been acquiesced in without objection by the Court.]

It appeared to him that the opinion now held by the Sudder Court ought not to be allowed to weigh against the opinion formerly expressed by them, supported as that former opinion was by the opinions of all the other Sudder Courts, and of those of the local Judges from whom communications had been received on the subject.

MR. HARINGTON said, the Honorable Member of Council opposite (Mr. Ricketts), in the remarks which fell from him at the last Meeting of the Council on the subject of his present motion, had alluded specially to him (Mr. Harington), and, if he recollected rightly, had stated that, in agreeing to dispense with written pleadings in suits which would be instituted under the Code, he had acted rather in deference to the opinions of others than from his own convictions. He wished, therefore, to say a few words in explanation of the line of conduct pursued by him in connection with the part of the Code under consideration. When he and Mr. Mills were engaged in the year 1851 in preparing a Code of Civil Procedure for the use of the East India Company's Courts in the three Presidencies, they gave much attention to the subject of written pleadings, and carefully weighed all the arguments for and against their use. In regard to petty actions of debt and the like, which they proposed should be tried by Courts of Small Causes or Courts exercising summary jurisdiction, they had no difficulty in coming to a decision. For cases of that description they did not see the necessity of written pleadings, and they proposed, therefore, that the plaintiff should be restricted to a brief written statement of his claim, and that the Court should be left to ascertain the grounds of the claim, as well as of the defence, by an oral examination of the parties or their representatives. They then considered whether they might not make the same system of pleading which they had proposed for simple demands of small amount applicable to all other classes of cases, but the conclusion at which they arrived was that such a mode of procedure, to quote the words of their Report, "was not suited to the habits of a civilized people, whose laws were not uniform, whose usages were peculiar, and whose transactions were frequently of a complex character." They went on to say:—

"With oral pleadings only, the Court might mistake the statements of the parties; the parties would come before the Court, not knowing beforehand what either party had to say or prove, and without the means of obtaining legal advice in the matter in suit between them; and the result would, we fear, be to increase litigation and expense. Moreover, we do not think it would be safe in suits relating to real property and other cases of complexity and difficulty to give to the Courts, as constituted and composed in this country, the power of reducing to writing the oral statements of the parties and of settling the issues altogether thereon.

"So violent a change would, we have reason to believe, be generally extremely unpopular and unsatisfactory to the people, and considering written allegations, therefore, to be indispensable to the efficient administration

of justice in cases of the above description, we have endeavored to simplify and limit the present form of pleading, and to render it less expensive and dilatory."

Her Majesty's Commissioners did not agree with Mr. Mills and himself for reasons which would be found stated in their report, though in the Code prepared by them, they introduced a Section which empowered the parties, for the purpose of assisting the Court in framing the issues, to put in written statements at the first hearing of the suit. The Code sent out by Her Majesty's Commissioners having been referred for his opinion, he made the following remarks in respect to the Section to which he had alluded and to the mode of pleading proposed therein.

"The system proposed by Her Majesty's Commissioners may be, and no doubt is, well adapted to simple actions of debt and the like, but I view its extension to complicated cases involving claims to real property, particularly those relating to inheritance, with considerable alarm, and think it would be unfair to the defendants in such cases to subject them to a *vivâ voce* examination by way of answer to the plaintiff's claim, in regard to many points involved in which they might be unable to give a clear and distinct answer without having recourse to a legal adviser, and then to hold them bound by what they may have so stated; while, if the *vivâ voce* examination is to be that of the advocates of the parties, instead of the parties themselves, I anticipate that the whole object of the law, which is to arrive at the truth by the simple process proposed by Her Majesty's Commissioners, will be defeated; that the advocates, frequently ignorant upon the points upon which they are examined, rather than acknowledge their ignorance, will hazard an answer to the questions put to them without caring much for the injury which they may be doing to their clients (this is found already to be the case even under the present system), and that it will soon be a trial of skill between the Court and the advocates, the former trying to elicit, and the latter trying to conceal as much as possible what they know; under such a system I cannot conceive that the ends of justice will be promoted to any greater extent than is the case at present. The objections which I entertain to the proposal of the Commissioners will no doubt in some measure be obviated by the written statements which the article under consideration will admit of the parties giving in whenever they may think proper to do so; but if written statements are to be allowed at all, I submit that it will be better for the parties themselves, and more convenient for the Courts, as tending to show the points on which issue is joined, or as distinguishing the facts admitted from those disputed, if they be in the form of plaint and answer, prepared according to a form or fixed rules, so far as rules can be laid down for their preparation, with a strict prohibition against the introduction of any argument or irrelevant matter."

Shortly after submitting the Report, in which these remarks were contained, the honor of a seat in this Council was conferred upon him, and having been nominated a Member of the Select Committee appointed to consider and report upon the Code, he lost no time in making the other Members of the Committee acquainted with his views; he failed, however, to convince them, and it was with some difficulty that he succeeded in obtaining a majority of votes in favor of a proposition made by him, that the Section to which he had already alluded should be transposed from the Chapter where it had been put by Her Majesty's Commissioners, to the place which it now occupied in the Code, and that the mention of the purpose for which written statements were to be allowed should be omitted. He considered that, in effecting these alterations in the Code, as prepared by Her Majesty's Commissioners, he had achieved a great triumph, and seeing no probability of being able to accomplish more, he was content to allow this part of the Code to stand as at present framed; but as the Honorable Member of Council opposite proposed now to alter the Code in a manner which would make it accord with the views expressed by Mr. Mills and himself, and to which he (Mr. Harington) still adhered, he felt that he was bound to support the Honorable Member's motion. He might observe that the amendment of the Honorable Member of Council, if carried, would lead to the discontinuance altogether of written pleadings or statements in all personal actions in which the amount or value in dispute did not exceed the sum of five hundred Rupees; in other words, in about four-fifths of the entire litigation of the country, which he thought would be a great improvement and a move in the right direction; while, as regarded suits of the description just mentioned, a further effect of the amendment would be that it would bring the Code more into conformity with what was proposed by Her Majesty's Commissioners.

He did not think the case referred to by the Honorable and learned Chairman furnished any argument against the adoption of the motion of the Honorable Member of Council. He was quite prepared to admit that the present system of written pleadings had been greatly abused, and the case alluded to might be quoted as an instance of such abuse; but, after all, what did that case prove? Surely not that written pleadings were bad or objectionable in themselves, but that the Judge, who framed the issues in the suit, was ignorant of his duties. Precisely the same thing might occur after an oral examination of the parties under the system proposed to be introduced. There would be nothing to prevent a defendant from entering in his defence into similar details to those contained in the written answer in the case in question, or a careless or ignorant Judge from falling into similar mistakes as regarded the issues to be laid down and tried.

He agreed with the Honorable Member for Bengal, that it would have been more convenient, if the objections, now urged by the Sudder Court at Calcutta to the doing away with written pleadings, had been taken in that Court's earlier remarks upon the Code; but if those objections were well founded, he did not think that it would be right to reject them simply because of the lateness of the period at which they had been brought forward.

MR. PEACOCK said, it appeared to him that the Code went quite far enough in the way of admitting written statements. Indeed, he was not certain that it did not go too far. Section XXVI, Item 3, required that the plaint should contain, among other particulars, the following:—

"The relief sought for, the subject of the claim, the cause of action and when it accrued; and, if the cause of action accrued beyond the period ordinarily allowed by any law for commencing such a suit, the ground upon which exemption from the law is claimed."

According to the form prescribed in Schedule B, the plaintiff must set forth the particulars of his claim in the summons; so that the defendant would see the nature of the cause of action specified in the summons.

It was provided as follows by a later Section:—

"The parties or their pleaders may tender at the first hearing of the suit written statements of their respective cases, and the Court shall receive the same and put them on the record. Such statements shall be written on the stamp paper prescribed for petitions to the Court where a stamp is required for petitions."

And afterwards:—

"No written statement shall be received after the first hearing of the suit, unless called for by the Court. But it shall be competent to the Court, at any time before final judgment, to call for a written statement, or an additional written statement from any of the parties. When such statements are called for by the Court, they shall be received on plain paper."

He thought that this would answer every useful purpose. Whatever the nature of the subject matter of the complaint might be, the defendant would have notice of it in the summons, and he might, if he wished, state his defence at the first hearing.

The effect of the proposed amendment would be that in all claims for immoveable property, or where the cause of action exceeded five hundred Rupees, there must be written pleadings. The object of Her Majesty's Commissioners was to avoid written pleadings, unless the case was of a complicated nature, and the Judge required them. They said:—

"In the great mass of cases the matter in dispute between the parties is evident from the first. In cases of more complexity it may be necessary to resolve the case into one or more distinct points; in other words to settle the issues. To assist the Judge in this operation, the parties are allowed to present written statements of what they respectively believe to be the material facts of the case, or, where they omit to present written statements, the Judge may call for them if he think proper. From the statements and the oral examination of the parties he is to frame and record the issues of law and fact on which the right decision of the case may appear to him to depend; and he is to appoint the time at which the issues of fact are to be tried, or the questions of law argued.

"This mode of settling the issues is not new to India. It has long been in practice in the Company's Courts; and great importance has always been attached to it by the Court of Sudder Dewanny Adawlut. It was intro-

duced by Regulation XXVI. 1814 of the Government of Bengal, which contains the following provisions on the subject, Section X Clause 2:—'If from the pleadings in the case the points at issue cannot be clearly ascertained, or if from any other reason further explanations may be requisite, the Court shall, on the day on which the suit may be first brought to a hearing, make such inquiries from the parties or their pleaders as may appear necessary, with a view to ascertain the precise object of the action, and the grounds on which it is maintained, and shall record the result in their proceedings. 3. The Court shall then consider and record the point or points to be established respectively by the plaintiff and defendant, and shall proceed to take the evidence which may be adduced by either party upon such points in the manner prescribed by the rules in force.' The above provisions have been adopted at Madras and Bombay, and on five different occasions the Sudder Dewanny Adawlut at Calcutta has called the particular attention of its subordinate judicatories to them, requiring their strict observance. In an appeal to the Privy Council from a decision of the Sudder Dewanny Adawlut at Madras, the Lords of the Council refused to sustain the judgment of the Court mainly for the purpose of supporting and securing compliance with what they term 'this most wholesome Regulation.' Recently, by an Act of the Indian Legislature, the provisions of the Regulation have been extended to suits before the Moonsiffs; and it is believed that the provision adverted to is now in very general operation. Finally, Mr. Mills and Mr. Harington recommend its continuance by their proposed Code of Procedure.

"If a statement of fact be substituted for the word 'pleadings' in the Clauses of the Regulations above cited, the settlement of issues in the manner suggested in our proposed scheme is only the continuance of an operation which is familiar to all the Judges of the Company's Courts in India; and the only difference between the measure suggested by us and the present practice is, that the production of written statements, and the formality of settling the issues, are reserved by the former for the complicated cases in which the Judge or the parties may think that they are required; and that by the latter they are made general, and are used in all cases, whether really requisite or not."

The Select Committee on this Bill thought that the parties in any suit should, if they pleased, put their written statements on record.

To compel a defendant to put in a written answer, might operate injuriously to him. He might have to go to a pleader for the written answer; whereas under the Bill, as it stood, he would go to the Court direct, the Judge would ask him what his answer to the summons was, and the answer would probably be some simple statement, namely, that he had paid the money sued for, or the like.

He referred to the extreme length of the record in suits under the present system, instancing the nuttee formerly spoken of, and one which he had since seen. It appeared to him that the Code as amended went quite far enough, and that, if the Council should alter its provision to the extent recommended, a door would be opened to the evils and abuses which prevailed under the present system.

MR. GRANT said, he had a very few observations to offer upon this question. He had not had an opportunity of giving much consideration to it before this day, but his vote would be regulated by the arguments he had heard on the motion made. The Honorable Mover had grounded his motion on the objections which had been brought forward by the Sudder Court. He had read those objections, and he must say that they appeared to him to be entirely well founded, and that he had not heard anything to-day which appeared to him an answer to them.

The Sudder Court said that there were three systems, and intelligible systems—the system of oral pleading, the system of written pleading, and the system of written pleadings controlled and checked by oral examination of the pleaders, and, if necessary, of the parties to the suit. He believed that all these three systems were more or less good. For a particular class of cases, he had no doubt that oral pleadings were the best system; whilst he believed that for other cases written pleadings, checked by oral proceedings, would form the best system. And there was experience enough to show that written pleadings alone constituted a fair working system. But under this Bill, there would be neither one thing nor the other. The system is to be one of oral pleadings; but there are to be written statements, which the parties are to have a right to put upon the record, and which he, (Mr. Grant) must take the liberty of calling written pleadings. Then, after these written pleadings are recorded, the Judge need not pay any attention

to them; and if there should be a complete difference between them, and the record of the oral pleadings, that is to be a matter of no consequence. He (Mr. Grant) could imagine no object for this, unless it were the object to perplex and confuse the Appellate Court. The record was the oral pleading: the parties, however, would put in what would be in the nature of written pleadings, and the two pleadings would have no reference to each other. The defendant might say "the oral pleading is incorrect, go to my written statement;" but the written statement need never be looked at for all that. He (Mr. Grant) suspected the truth to be that the framers of the plan were in theory strongly in favor of the simple system of oral pleading; but when they came to think out the question, and to trace what the practical result of that system might be in India, they had become afraid of their own theory, and thus had grown out this excrescence of written statements, which as far as he could see would be no security, whilst it would create confusion and disorder in the appeal, and render the Appellate Court incapable of coming to a conclusion satisfactory even to itself.

The whole system reminded him of a celebrated cause in Rabelais, in which the plaint is unintelligible enough, and the humour consists in the answer, which is no more intelligible, having no reference whatever to the plaint; and the climax of the fun is in the judgment, which has not the remotest connection with the plaint or the answer. Now if it were the object to have our causes tried on this model, the proposed system seemed likely to meet it. For look what that system is. The two written statements, which are in fact the written plaint and answer, are to be put in simultaneously; so that the person who draws the answer is not to see what he has to answer until afterwards. Now if that was not the way to get an answer like that in Rabelais' case, he did not know a better. Then it is expressly provided that the Judge may, if he pleases, give a judgment with no more respect to these written pleadings than Rabelais' judge showed. He (Mr. Grant) did not think that this could be a good system. He should vote in favor of the Honorable Member's Motion; but meaning by that vote only to go as far as to affirm in regard to large cases, the opinion of the Judges of the Calcutta Sudder Court, that it would be preferable to adhere to the present system of written pleadings, aided by the oral examination of the pleaders, or if necessary the parties to the suit.

THE CHAIRMAN observed that it was expressly provided that the summons to be served on the defendant should state the particulars of the claim. The written statements would be put in at the first hearing.

MR. RICKETTS' motion being put, the Council divided—

Ayes 3.	*Noes* 5.
Mr. Harington.	Mr. Forbes.
Mr. Ricketts.	Mr. Currie.
Mr. Grant.	Mr. LeGeyt.
	Mr. Peacock.
	The Chairman.

So the Motion was negatived.

MR. HARINGTON moved the insertion of the words "or if the pleader be accompanied by another person able to answer all material questions relating to the suit, then such other person" after the words "by a pleader" in the 6th and 7th lines of Section 125.

Agreed to.

MR. HARINGTON moved that the words "Such examination shall (unless the pleader be the person examined) be" be substituted for the words "Every party who is examined shall be examined" in the 6th and 7th lines of the Section.

The Motion was carried, and the Section as amended was agreed to

MR. CURRIE moved the insertion of the words "not being documents relating to affairs of state, the production of which would be contrary to good policy" after the word "papers" in the 7th line of Section 138.

The Motion was carried, and the Section as amended was agreed to.

MR. CURRIE moved that the words "satisfaction of the decree be otherwise" be substituted for the words "it shall be proved to the Court that satisfaction thereof has been" before the word "made" in the 7th line of Section 245.

The Motion was carried, and the Section as amended was agreed to.

MR HARINGTON moved the addition of the following Proviso to Section 378 :—

"Provided that no review of judgment shall be granted without previous notice to the opposite party to enable him to appear and be heard in support of the decree of which a review is solicited."

The Motion was carried, and the Section as amended was agreed to.

MR. HARINGTON moved the omission of the words "Provided that" in the beginning of Section 379.

Agreed to.

MR. PEACOCK moved that the words "This Act shall come into operation in the Presidency of Bengal from the 1st day of July 1859, and in the Presidencies of Madras and Bombay from the 1st day of January 1860, or from such earlier day as the local Government in those Presidencies respectively shall fix and shall publicly notify in the Gazette of the Presidency three months at least before the date so fixed" be substituted for all the words before the word "But" in the 4th line of Section 387.

Agreed to.

MR. PEACOCK moved that the words "pending at the time when this Act shall come into operation" be substituted for the words "then pending" in the 5th line of the Section.

The Motion was carried, and the Section as amended was agreed to.

The Council having resumed its sitting, the Bill was reported.

MUNICIPAL ASSESSMENT (BOMBAY).

MR LEGEYT moved that the Bill "to amend Act XXV of 1858 (for appointing Municipal Commissioners and for raising a Fund for Municipal purposes in the Town of Bombay)" be referred to a Select Committee consisting of Mr. Peacock, Sir Charles Jackson, and the Mover.

Agreed to.

SALES OF LAND IN EXECUTION OF DECREES.

MR. RICKETTS postponed, till Saturday, the 19th Instant, his adjourned motion respecting sales of land in execution of decrees of Court.

CIVIL PROCEDURE.

MR. PEACOCK gave notice that he would on the same day move the third reading of the Bill "for simplifying the Procedure of the Courts of Civil Judicature not established by Royal Charter."

PENAL CODE.

MR. CURRIE moved that a communication received by him from the Bengal Government, relative to the introduction of Corporal Punishment for infraction of the Abkaree Regulations in Military Cantonments, be laid upon the table and referred to the Select Committee on "The Indian Penal Code."

Agreed to.

The Council adjourned at 5 o'clock on the motion of Mr. Grant till Monday the 14th Instant.

Monday, March 14, 1859.

PRESENT:

The Right Honorable the Governor-General, in the Chair.

Hon. the Chief Justice.	P. W. LeGeyt, Esq,
Hon. J. P. Grant.	E. Currie, Esq.
Hon. Lieut.-Genl. Sir J. Outram.	H. B. Harington, Esq., and
Hon. H. Ricketts.	H. Forbes, Esq.
Hon. B. Peacock.	

CUSTOMS DUTIES.

THE GOVERNOR-GENERAL moved that the Council resolve itself into a Committee on the Bill "to alter the Duties of Customs on goods imported or exported by sea."

The question being proposed—

MR. GRANT said, before the Council went into Committee, he wished to say a few words on one particular point in connection with the Bill.

The Bill did not touch Salt, and very properly so; because the Salt duty was in effect an Excise duty, and the Customs Laws applicable to it were merely auxiliary to the Excise Law.

In the speech which His Excellency had made last Saturday, His Excellency had remarked that he should be opposed to any proposal for raising the

Excise duty upon Salt. He had understood His Excellency, in making that observation, to allude only to Salt in Bengal, in the Punjab, and in the North-Western Provinces; and, subject to that limitation, he entirely concurred in His Excellency's opinion. He quite agreed that it would be impolitic to raise the duty upon Salt on this side of India; but the duty upon Salt differed widely in different parts of India, and he thought that the duties in Madras and Bombay might probably be raised materially without bearing severely upon the inhabitants of those Presidencies. In the Presidency of Bengal, and the Provinces below Allahabad, the duty at present levied is 2 Rupees 8 annas the maund. Above Allahabad, both in the North Western Provinces and in the Punjab, it is 2 Rs. the maund. At Madras, it is practically about 14 annas the maund. The system there is to sell Salt at 1 Rupee the maund; and of this amount, he believed that about 14 annas might fairly be taken to be the duty, on an average. At Bombay, the duty is 12 annas the maund. These were very great differences. Before the present financial pressure, it had always been the object and policy of the Government to get rid of the differential duty of 8 annas between Bengal and the Provinces above Allahabad. A few years ago, the duty upon Salt in Bengal and the Lower Provinces was 3 Rupees 12 annas the maund; but the Government had gradually worked it down to 2 Rupees 8 annas. It had always been its object to get rid altogether of the differential duty of 8 annas between the Upper Provinces and Bengal. At present, owing to the financial pressure, all idea of reducing the duty anywhere is out of the question. The existing duty of 2 Rupees 8 annas in Bengal must remain for a time; but he considered that 2 Rupees a maund was a sufficient rate of duty to levy on the article of Salt, and he hoped still that the time would come when that uniform rate might properly be fixed over the whole of this side of India. He did not see, however, that it followed, that because the duty on Salt could not be raised on this side of India, it could not be raised in Madras and Bombay. He was aware of no good reason why the inhabitants of those Presidencies should not pay eventually what was reckoned a proper duty on Salt in Bengal, as they pay the same duty that is levied upon all articles of import and export by sea in this Presidency, and as they pay, or ought to pay, the same excise on spirits that is paid here. He thought, therefore, that it would be a very proper subject of consideration by the Governments of Madras and Bombay, whether their local duties upon Salt might not with propriety be raised. If they could be raised without bearing too heavily on the consumers, he thought they should be raised forthwith to the extent perhaps of 1 Rupee 8 annas the maund, which would be at the rate of 100 per cent. at Bombay, and a little more than 5 per cent. at Madras.. This would give a large increase of revenue; and it would leave the duty in the Bombay and Madras Presidencies still materially less than it is in every Province on this side of India.

He had made these remarks only in order that what had fallen from His Excellency the President of the Council at the last Meeting, and his (Mr. Grant's) own concurrence therein, might not be misunderstood.

THE GOVERNOR-GENERAL said, that in his observations on Saturday last, he alluded only to the duty on Salt on this side of India, and had in his mind the difference between the duty in Bengal and the duty in the North-West, beyond Allahabad. The sooner the Government could equalize these duties by abolishing the differential duty of 8 annas, the better. He had intended that the measure should have been taken before, and but for subsequent events, the occurrence of which we are now deploring, this would have been done. That would have been touching the duty on Salt; but it would have been by reducing it for the purpose of equalization. He quite agreed with the Honorable Member who had last spoken, in thinking that the increase of the duties on Salt in the Presidencies of Madras and Bombay was a very proper subject for consideration; but it could not be considered now in connection with this Bill, which was a measure relating entirely to an alteration of the duties levied on goods imported or exported by sea.

The Motion that the Council go into Committee upon the Bill was then put and carried.

Section I repealed portions of Schedules annexed to certain Acts "from and after the passing of this Act." It was passed after an amendment repealing the Schedules "from and after the 12th day of March 1859," and a further amendment exempting the articles of Salt and Opium from its operation.

Section II was passed after an amendment.

Section III provided as follows:—

"Nothing in this Act shall apply to the articles of Salt or Opium, or to Teak Timber exported from the Arracan, Pegu, Martaban, and Tenasserim Provinces."

It was passed after the omission of the words "the articles of Salt or Opium, or to."

Section IV related to contracts or agreements for the sale and delivery of goods *in transitu* to this country, which had been made without reference to any increase in the import duties.

MR. CURRIE said, before he came into Council that morning, two members of the Mercantile Community had called at his house, and represented to him that this Section, instead of affording them relief, would affect their interests injuriously. They said that very large consignments of Manchester goods were in transit to Calcutta; that about two-thirds of the whole had already been sold by factors or agents here to Native merchants in the bazaar, under contracts for particular prices: and that it would be absolutely necessary for the factors to give delivery at those prices, notwithstanding any provision in this Bill, as otherwise much litigation would ensue, and an amount of ill-feeling, which would be destructive of their business with them; and the effect of the Section would consequently be to throw the whole loss on the factors and agents in this country, who had done their best for the interests of their principals at home. If the Act provided a remedy for the recovery of the difference of duty, the constituents of the factors here would look to them for that difference; whereas if this Section were omitted, the loss would fall on the owners of the goods. It seemed to him but just and proper that, when an unforeseen change like that proposed by this Bill was introduced, the difference should be paid by the purchaser, who would have the means of reimbursing himself by increasing the price of the goods. The gentlemen who had had an interview with him, however, said, that this was absolutely impossible. There had been no time to call a meeting of the Chamber of Commerce; but they stated that all the merchants to whom they had spoken were of opinion that the Section should be omitted. He could not say that he was prepared to make any Motion on the subject, because the information before him was only that which had been represented to him that morning. He thought it was to be regretted that more time had not been allowed for the due consideration of a measure bearing so largely on the interests of the Commercial Community.

THE CHAIRMAN said, he did not clearly understand the drift of the objection which was taken to the Section. The object of the Section was not to put any compulsion on factors or agents for goods in transit to India, who had already contracted to sell at particular prices, and so to force them to charge to the purchasers the additional rate of duty to which such goods would be liable under this Bill, but only to empower them to do so. Therefore, as to the apprehension of raising bad blood between the agents of the owners in England, and the Native purchasers in the bazaar, nothing could be easier for the former than to avoid it by forbearing to exercise the power which the Section gives. The Section had been inserted for the purpose of protecting those who had given orders in England consequent on their contracts with dealers here, and to afford them the means of recovering the difference between the existing duties and the increased duties.

THE CHIEF JUSTICE said, he could infer from the statement of the Honorable Member for Bengal what the apprehension entertained really was. The contracts to which the gentlemen with whom the Honorable Member had had an interview referred, were contracts not, as he understood the mat-

ter, between importers of goods on their own account, made before hand, but contracts for the sale of goods exported by the owners in England to their agents or factors in India for sale generally. The factor sold the goods while they were still at sea at a fixed price. If the goods were the property of the contractors themselves, the argument of His Excellency would have been unanswerable. But these men, being only factors, feared that if they insisted on the right given to them by this Section of enforcing payment from the purchasers of the difference between the present and the increased rates of duty, they would diminish their credit with the Native dealers in the bazaar; whilst, on the other hand, if they forebore from insisting on that right, they would offend their principals in England; so that they would be between two fires. To him, the apprehension entertained did not seem to be of a very serious character. Ordinarily, judging from the contracts which he was in the habit of seeing in Court, the factor sold through his banian, and had little personally to do with the Native purchasers. On the other hand, these transactions were very much complicated by the relations between the European merchants and their banians, who were liable, in consideration of their dustoorie, which was in the nature of a *del credere* commission, to be held responsible for the completion of the contract.

On the whole, he thought that justice would be better worked out by this clause, which had precedent in its favor, than by any other which could be proposed. At the same time, he considered it would be better if the Chamber of Commerce had had time to consider and express their opinion upon the question.

MR. PEACOCK said, he was not at all prepared to abandon the Clause; and from what had fallen from the Honorable and learned Chief Justice, he thought it ought not to be abandoned. It was entirely optional with factors in India to enforce the power given by the Section. The Section had been taken from a similar one in 21st of Victoria, c. 15, s. 4,—which, indeed, went a little further. If the factor in India paid the difference between the existing duties and the increased duties upon goods *in transitu*, in order to bring those goods into this Port for delivery to the purchaser, he paid the money to the use of the purchaser, and was entitled to a lien upon the goods until the purchaser repaid him. To allow the rescission of contracts already entered into, would be to interfere very much more with the rights of individuals than the present Section did. It would enable every factor to rescind a contract for the sale of goods the price of which had risen since the date of the contract.

THE CHIEF JUSTICE said, he did not know that any provision could be suggested which would work less evil than that which stood in the Bill. What was now proposed, would work a rough kind of justice. If the effect of the change were to raise the price of goods at once, then no doubt it would be perfectly just between the parties contracting that the seller should add the difference between the present and the increased rates of duty to the price of the goods. But if it was true, as he had been told, that the stocks in the country were now unusually large, the immediate effect of this Section would not be to raise the price of goods in a ratio corresponding to the increase in the duties; and, therefore, if the purchaser had contracted to take the goods for a particular price, intending to sell them at the market rate of the day, and if he should have to pay an additional amount of duty upon them, his calculations of profit would be very much disturbed, and he would be very injuriously affected by the Act.

MR. CURRIE said, the case was as stated by the Honorable and learned Chief Justice. By far the larger portion of goods which would arrive within the next two months had been sold by factors on account of their principals in England. Then, supposing the case to be as had been represented to him, that the increased duty could not be recovered from the native purchasers, on whom was the loss to fall? Ought it to fall on the factors, who had done their best for the interests of their principals?—or ought it to fall on the owners in England? It appeared to him that it ought to fall on the owners in England.

MR. GRANT said, he did not think that the Honorable Member for Bengal had put the question on its proper footing. The question was not whether the loss consequent upon the increase in the duties ought to fall upon the owners of the goods in England, or upon the factors of the owners here; but whether it ought not to fall upon the consumer. It was not the object of the Government to tax the manufacturer in England; it was not the object of the Government to tax the merchant in India; the object of the Government was to tax the Indian consumer; and, therefore, the Bill threw the incidence of the new taxation proposed upon the consumer, or as near the consumer as the Government could get. If the Council should throw this Section out, it would defeat this object, and would tax the English manufacturer. The object was, as far as possible, to save all parties from loss on past transactions, and to make the new tax fall, from the first, as far as that could be done, wholly on the consumer.

MR. PEACOCK said, the objection to the Section seemed to be that if factors in India insisted upon the payment of the increased duty by the purchasers in the bazaar, they would diminish their credit with them; and that, if they did not, they would offend their principals in England. Now he did not think that that was a sufficient objection.

MR. CURRIE said, he had no Motion to make on the subject.

The Section was then put, and agreed to.

Section V provided that the Act should take effect on and after the 12th day of March 1859.

MR. PEACOCK moved the addition of the following words to the Section:—

"And every Collector of Customs and other Officer is hereby indemnified for any thing done on or after that day in collecting or enforcing the duties imposed by this Act, or in otherwise carrying into effect the provisions hereof, and no action or other proceeding shall be maintained against any such Collector or other Officer in respect of any thing so done."

Agreed to.

Schedule A declared what articles should be duty free.

Item 1 of the Schedule was passed as it stood.

Item 2 ("precious stones and pearls") being proposed—

MR. CURRIE said, he did not see why these articles should be exempt from duty, when the Bill professed to tax luxuries. He was aware that, under some late enactment, they were admitted duty free in England; but he did not know for what reason. He raised his objection merely as a matter of principle, for the importation of precious stones and pearls was small, the value, he believed, being estimated at not more than about a lakh of Rupees a year. He would suggest that the Item 2 be omitted.

THE CHAIRMAN said, it was quite true that precious stones, being essentially an article of luxury, ought, in accordance with the declared principle of this Tariff, to be taxed. But it was to be remembered that there were other principles to be observed in taxation besides that of assessing a duty on luxuries—and he could hardly imagine a greater error than the imposition of a tax in the collection of which the Government was certain to be defeated. A man might carry a king's ransom in his waistcoat-pocket, and it would be impossible to enforce a system of search so vexatious as that which would be necessary to insure detection in such a case. The principle upon which the article of precious stones was declared free by this Bill, was one which, he believed, obtained in every country, and surely it was a sound one.

The Item was then passed.

Items 3 to 8 were passed as they stood.

Item 9 ("Machinery for the improvement of the communications, and for development of the resources of the country") being proposed—

MR. CURRIE said, he knew, from his own experience in former years in the Custom House, and from the information of the present Custom House Authorities, that exemptions of this kind led to innumerable disputes and much dissatisfaction. Some years ago, an order was passed by Government directing that machinery should be passed free of duty, and he knew

that it used to be a perpetual source of dispute as to what was really included in machinery. Any implement almost was a machine, and it was not easy to say what was machinery. He remembered a question being raised about the importation of some Printing Presses. Printing Presses were undoubtedly machines; but whether they were machinery seemed to be a doubtful question, Under the restriction prescribed in this Schedule, they would not be exempt; but there were other articles as to which the question would certainly arise whether they were machinery; and if they were, whether they were machinery for the development of the resources of the country.

Then, it seemed to him that there was not much consistency in the exemption. According to the proposed Tariff, the iron ribs and plates for the construction of river steamers would be liable to duty; but the engines put into them would be free. Rails for the railways would be liable to duty; but the locomotive which was to run upon them would be free. It would be a great relief to the Custom House Authorities if the Item in question were struck out. He accordingly moved that Item 9 be omitted.

THE CHAIRMAN said, that he understood his Honorable friend to object broadly to the exemption of any machinery whatever from import duty, and also to contend that the exemption would be a fruitful cause of disputes.

With respect to the latter objection, he (the Chairman) thought that the Government could do nothing better for the purpose of avoiding disputes than by declaring machinery free of all duty.

It might be urged, he did not know, whether with much force, that the definition in the Schedule was not a happy one. If this were really so, and any terms more explicit, which would avoid disputes, could be suggested, he should be very happy to consider them. For his own part, however, he did not think that there would be many disputes. No doubt there had been occasionally some questions raised on this subject, which had come up before Government for decision: but these questions had been very rare, and some of them were so absurd, that they answered themselves by the mere statement of them. Certainly, there could be nothing in itself unfair in imposing taxes on Societies which had such bright prospects before them, as the Railway Companies; and an enquiry, which had been instituted two or three years ago, had showed that about three-fourths of the machinery imported were imported by those Companies. But there were many inventions in machinery in use in England quite distinct from railway machinery, which we might hope to see introduced into this country, the resources of which they would materially assist in developing; and the best mode of encouraging their introduction was to admit them duty free; and that not only for the sake of the benefit to be derived from the use of each machine, but also in order to put such inventions as much as possible before the people, that they may become familiar with them and learn to imitate them. In proof that progress was making in this respect, he would mention that only a few days ago, a proposal had come up to Government, very much to his surprise, from the active and energetic Superintendent of Marine, to build, on his own responsibility, the steam engines required for a powerful river steamer, with no other aid than he can obtain in Calcutta, and he expected that it would be able to compete successfully with the improved river steamers which were now to be sent out from England. Some years ago, such a proposal would probably have been laughed at; but he saw no reason to doubt that it would succeed.

MR. CURRIE said, if machinery was constructed here, the materials would be liable to duty under this Tariff, and that, it appeared to him, was rather an argument against imported machinery being declared free. Why should machinery coming out from England be duty free, when the materials of which machinery might be constructed in this country would be liable to duty? He spoke from his own experience, and from that of the Collectors of the present day, when he said that the exemption proposed would lead to constant disputes and difficulties.

MR. PEACOCK said, to avoid the disputes, the following Clause had been inserted in the Schedule :—

"And the Collector of Customs, subject to the orders of the local Executive Government, shall decide what articles of machinery come within the above definition, and such decision shall be final in law."

The Executive Government would hardly go wrong with the definition which was given before them.

MR. CURRIE, with the leave of the Council, withdrew his Motion, and the Item was then passed.

Items 10 to 14 were passed as they stood.

Item 15 ("Haberdashery, Millinery, and Hosiery") being proposed—

MR. CURRIE said, "Haberdashery" and "Millinery" were very vague and undefined terms, and it would scarcely be possible to determine what articles should be passed under this Item, which imposed a duty of 20 per cent., and what under the Item of unenumerated articles, which imposed a duty of only 10 per cent. The definition of the words given by McCulloch in his Commercial Dictionary, was as follows :—

"Haberdashery and millinery.—Closely allied, but vague and ill-defined terms, which are used to designate a great variety of articles, but especially those which either form component parts of ladies' dresses, or which are required to make or mend them. Dr. Johnson calls a haberdasher a 'dealer in small wares, a peddler.' But it is not easy to imagine a definition wider of the mark than this. It is true that a haberdasher deals in needles, pins, thimbles, sewing thread, and such like petty articles; but he also deals in articles of first-rate importance, including all sorts of linen, woollen, silk and cotton goods, &c."

He thought that "haberdashery" and "millinery" were such very undefined terms, that it would be scarcely possible to determine, without some further definition than was now given in the Schedule, what the articles were that should be liable to the enhanced duty of 20 per cent. He did not know of any Tariff in the world in which these words were used; and he thought that, in practice, they would be found extremely difficult of application.

At present, there was no difficulty; because it was immaterial whether articles came under the description of "haberdashery" or "millinery," or whether they came under the head of "piece goods" or any other article not enumerated in the Tariff, since they paid a duty of 5 per cent. in either case; but when a new differential duty of 10 per cent. was imposed upon a particular class of imports, it was important to determine what were the articles that could be said to belong to that class.

Another objection to the Item was that it would apply only to the European and Eurasian parts of the community. The duty was raised from 5 to 20 per cent. Unless it could be shown that there was an absolute necessity for such an increase, he should be disposed to move for the omission of this Item from this part of the Schedule leaving it to fall under the head of unenumerated articles.

THE CHAIRMAN said, that, although the term "haberdashery" did not exist in the Customs Law, it exists in the Custom House List. That being the case, there surely must be an understanding in the Department as to what the word meant. The Officers of the Customs must have in their minds a tolerably clear notion as to what articles would come under the head of "haberdashery," and what under that of "piece goods," or any other head unenumerated in the Schedule. He did not apprehend the difficulty which the Honorable Member for Bengal anticipated; but, at the same time, he felt bound to say that the matter was one upon which he spoke with very little certainty.

MR. CURRIE said, he thought that the Item would give rise to very great difficulty. Supposing Madame Gervain should import a quantity of French or English silk in the piece. Would that be "millinery?"

MR. GRANT said it would not be.

MR. CURRIE. Then, suppose she should import a quantity of French or English silk in the form of dress pieces. Would that be "millinery?" He thought that the use in a Tariff of phrases which were indefinite, would occasion much difficulty; but he would make no Motion.

MR. GRANT moved the addition of the following words to the Item :—

"And the Collector of Customs, subject to the General Orders of the local Executive Government, shall decide what articles come within the above definition, and such decision shall be final in law."

Agreed to.

Mr. GRANT moved that the word "general" be inserted before the word "orders" in Item No. 9.

Agreed to.

Items 16 to 21 were passed as they stood.

Item 22 ("Porter, Ale, Beer, Cider, and other similar fermented liquors") was passed after amendments.

Item 23 (subjecting all unenumerated articles to a duty of 10 per cent.) being proposed—

THE CHIEF JUSTICE said, he was happy to state that, though a delay of forty-eight hours had been allowed between the introduction of the Bill and its consideration in Committee, no objection had been made to him to the proposed Tariff, except one—a circumstance from which he hoped he was justified in inferring that this measure was as popular as any increase of taxation could be to any community. The objection was that it would not be right to double the duty on medical drugs and surgical instruments.

THE CHAIRMAN said, he was not aware until now that this objection was felt in any quarter. With respect to surgical instruments, he did not think that the objection was a very sound one One surgical instrument did a great deal of work. Every body did not want a surgical instrument, and he did not think that a duty of 10 per cent. would make any difference with respect to the supply of such articles to those who used them. With respect to drugs, the objection might probably be better founded. He knew that, either from irregularity in sending them up, or from their spoiling by keep, the want of them had been very much felt Up-country. But he doubted whether any case had been made out for reducing the duty upon them below 10 per cent. He did not know what the amount of duty now collected upon them was. If the Honorable and learned Chief Justice proposed to make any motion on the subject, he should like to have time to consider it.

THE CHIEF JUSTICE said, he had no Motion to make, and the Item was then put and carried.

Schedule B (which related to Exports) was passed after amendments.

The Title was agreed to.

The Council having resumed its sitting, the Bill was reported.

THE GOVERNOR-GENERAL moved that the Bill be now read a third time and passed.

The Motion was carried, and the Bill read a third time.

THE GOVERNOR-GENERAL announced that he had given his assent to the Bill.

The Council adjourned.

Saturday, March 19, 1859.

PRESENT :

The Hon'ble the Chief Justice, *Vice-President*, in the Chair.

Hon. J. P. Grant,	E. Currie, Esq.,
Hon. Lieut.-Genl. Sir J Outram,	H. B. Harington, Esq ,
Hon. H. Ricketts,	H. Forbes, Esq., and
Hon. B. Peacock,	Hon. Sir C. R. M. Jackson.
P. W. LeGeyt, Esq.,	

CARNATIC ESTATE.

THE CLERK presented a Petition from certain creditors of the estate of the late Nawab of the Carnatic against the passing of Act II of 1859.

MR. FORBES moved that this Petition be laid upon the table.

Agreed to.

INDIAN NAVY.

THE CLERK reported to the Council that he had received from the Home Department a communication from the Bombay Government, relative to a suggestion by the Commander-in-Chief of the Indian Navy, respecting the propriety of obtaining an Act of Parliament conferring on the Indian Navy certain powers given to the Officers in

command of vessels of the Royal Navy by the Merchant Shipping Act of 1854, within the limits of the Indian seas.

MR. PEACOCK moved that the above Petition be printed.

In answer to a question from Mr. Currie—

THE VICE-PRESIDENT read the Section of the Act which His Excellency the Commander-in-Chief proposed to alter, namely, Section 260, which ran as follows :—

"Any Officer in command of any ship of Her Majesty on any foreign station, or, in the absence of such Officer, any Consular Officer, may summon a Court, to be termed a 'Naval Court,' in the following cases (that is to say)

(1.) Whenever a complaint which appears to such Officer to require immediate investigation is made to him by the Master of any British ship, or by any certificated Mate, or by one or more of the Seamen belonging to any such ship.

(2.) Whenever the interest of the owner of any British ship or of the cargo of any such ship appears to such Officer to require it.

(3.) Whenever any British ship is wrecked or abandoned, or otherwise lost at or near the place where such Officer may be, or whenever the Crew or part of the Crew of any British ship which has been wrecked, abandoned, or lost abroad, arrives at such place."

THE VICE-PRESIDENT said, he doubted whether the Council could alter the Act. It certainly could not extend the powers given by the Section he had just read beyond the Indian Ports, but he thought that the communication might be printed.

MR. PEACOCK said, he doubted whether it would be expedient to make the alteration even if the Council had the power to do so. A Despatch had been sent out from the Court of Directors a short time ago, ordering that none of the provisions of the Articles of War relating to the Indian Navy should be altered by the Indian Legislature, without previous reference to the Home Authorities. That Despatch, he thought, was still in force, although the Court of Directors was a body no longer in existence.

The Motion was agreed to.

PRISONERS UNDER SENTENCE OF TRANSPORTATION.

THE CLERK reported a communication from the Bombay Government on the subject of subjecting prisoners sentenced to transportation to hard labor during the period intervening between sentence and deportation.

MR. PEACOCK moved that the above communication be printed.

He believed that the subject would be provided for in the Penal Code. It seemed very right that prisoners sentenced to transportation should be kept to hard labor until their deportation.

The Motion was agreed to.

OATHS AND AFFIRMATIONS.

THE CLERK reported a communication from the Revd. Dr. Wilson of Bombay, with annexures, containing objections to the principle of the Bill "concerning Oaths and Affirmations."

MR. FORBES moved that the above communication be printed.

Agreed to.

POLICE (PRESIDENCY TOWNS AND STRAITS SETTLEMENT).

MR. CURRIE moved the first reading of a Bill "to amend Act XIII of 1856 (for regulating the Police of the Towns of Calcutta, Madras, and Bombay, and the several stations of the Settlement of Prince of Wales' Island, Singapore, and Malacca.)"

He said the object of the Bill was to amend one of the provisions of the Act. By the Law which was in force in the Town of Calcutta before the Act of 1856 came into operation, it was provided that the keepers of all houses, shops, and rooms of public resort and entertainment, wherein provisions, liquors, or refreshments of any kind should be sold or consumed, were obliged to take a license from the Justices of the Peace. Under the Act now in force in all the Presidency Towns, the necessity of obtaining a Police license was restricted to keepers of places in which spirits or fermented liquors were sold. The consequence was that in Calcutta a number of Coffee Houses and Boarding Establishments for Sailors had been set up without the cognizance of the Police, and repeated representations had been made by the Commissioner of Police as to the expediency of subjecting them to check. It had also been represented by the licensed keepers of shops and

taverns that these unlicensed houses were an easy means of evading the Excise Law, and that, though it was difficult to convict them of the offence, there could be no doubt that spirits, beer, and wines were sold in them. The Commissioner of Police and the Honorable the Lieutenant-Governor of Bengal were very desirous that the old Law should be restored, and be applicable to all houses of public resort and entertainment whether spirits and other liquors were sold in them or not. The main object of the Bill was to make this amendment in the existing Act. It also provided for one or two trifling omissions in that Act, upon which, however, it was unnecessary that he should detain the Council.

The Bill was read a first time.

CIVIL PROCEDURE.

MR. PEACOCK moved that the Bill "for simplifying the Procedure of the Courts of Civil Judicature not established by Royal Charter" be now read a third time and passed.

The Motion was carried, and the Bill read a third time.

SALES OF LAND IN EXECUTION OF DECREES.

MR. RICKETTS said, it was not his intention to proceed with the Motion (which stood in the Orders of the Day) respecting sales of land in execution of decrees of Court, and, with the leave of the Council, withdrew it.

MADRAS POLICE.

MR. FORBES moved that the Bill "for the better regulation of the Police within the Territories subject to the Presidency of Fort St. George" be referred to a Select Committee consisting of Sir James Outram, Mr. Peacock, Mr. LeGeyt, Mr. Harington, and the Mover.

Agreed to.

CIVIL PROCEDURE.

MR. PEACOCK moved that Mr. Ricketts be requested to take the Bill "for simplifying the Procedure of the Courts of Civil Judicature not established by Royal Charter" to the Governor General for his assent.

Agreed to.

The Council adjourned.

Saturday, March 26, 1859.

PRESENT.

The Hon'ble J. P. Grant, Senior Member of the Council of the Governor-General, Presiding.

Hon. Lieut.-Gen. Sir James Outram,	E. Currie, Esq.,
Hon. H. Ricketts,	H. Forbes, Esq.,
Hon. B. Peacock,	and
P. W. LeGeyt, Esq.,	Hon. Sir C. R. M. Jackson.

CIVIL PROCEDURE.

THE PRESIDENT read a Message informing the Legislative Council that the Governor-General had assented to the Bill "for simplifying the Procedure of the Courts of Civil Judicature not established by Royal Charter."

PENAL CODE.

THE CLERK reported to the Council that he had received a communication from the Home Department relative to light and debased Coin tendered by the public at the General Treasury, with a view to the introduction of a new law for enabling the Government to deal with such Coin and the parties tendering them in a more stringent manner than is provided for by the existing law.

MR. PEACOCK moved that the above communication be referred to the Select Committee on "The Indian Penal Code."

Agreed to.

ABKAREE REGULATIONS (MILITARY CANTONMENTS).

THE CLERK also reported that he had received from the Home Department a communication concerning a proposed introduction of corporal punishment for breach of the Abkaree Regulations in Military Cantonments, and referring to objections to the principle of commuting labor for fine.

RECOVERY OF RENTS (BENGAL).

MR. CURRIE presented the Report of the Select Committee on the Bill "to amend the law relating to the recovery of Rent in the Presidency of Fort William in Bengal."

EMIGRATION.

MR. PEACOCK postponed the Motion (which stood in the Orders of the Day) for the first reading of a Bill "to amend the law relating to the emigration of Native Inhabitants of India."

VILLAGE WATCHMEN (BENGAL).

MR RICKETTS moved the second reading of the Bill "to regulate the appointment, employment, and dismissal of Village Watchmen in the Territories under the Government of the Lieutenant-Governor of Bengal."

In doing so, he said that it had been remarked to him that it would have been better if he had made mention of the existing laws regarding Chowkeydars, but in truth though much had been written about Chowkeydary, they were mentioned in the laws only in Section XVIII Regulation XXII of 1793, Section XXI Regulation XX of 1817, Section XXI Regulation XII of 1807, in which it was merely provided that Chowkeydars should be registered at the thannah. It might be as well to repeal the provisions of Section XX Regulation XX of 1817, which provided for periodical visits of the Chowkeydars to the thannahs, but it mattered little. A Magistrate could dispense with them if he considered them unnecessary.

He had observed in two of the Calcutta papers some remarks respecting the Bill. One paper supposed that it was his intention to increase the tax. He had no such intention. On the contrary he was quite willing, as he said before, to take one-third less than the sum now collected for the payment of Village Watchmen. The present amount exceeded 59 lakhs, and he would be satisfied with two-thirds of that sum, and with that he should be able to provide a sufficient number of Chowkeydars. In another paper it was represented that it was his intention to take away the remaining Municipal liberties of the people, and that as he had been long enough in the country, he ought to know that the natives were willing and able to take care of themselves. Now, though the natives might be quite as capable of taking care of themselves as any of our fellow-subjects in other parts of the British dominions, still that would not provide food for the Chowkeydars, nor improve their organization. It was not his wish to deprive natives of their Municipal liberties, but to organize the Police in places where there was no organization, and to turn the sum collected to some purpose; at present it was all thrown away.

If the Council should allow the second reading of the Bill, he could only promise that he would, before the Bill passed into law, readily and carefully attend to any suggestions that might be received, and if the Bill should fail to be a useful measure, it would not be owing to any want of pains-taking on his part.

MR. LEGEYT said, he did not oppose the second reading of the Bill, but he wished to make a few observations as to its provisions generally. He was disposed to regard the Bill as a portion of the great general question of Police now before the Council in the shape of the Madras Police Bill. He found that in the annexures of that Bill the principle of a Village Police was ably and clearly laid down, and it was shown that the system proposed to be adopted might be introduced also in Bengal. It was his conviction that any system of Police established in India, to be successful, must have for its basis a good and well superintended Village Police. The Honorable Member, after reading from the proposed rules for the Madras Police, went on to say that, whatever might be the superstructure of a Police system, those by whom crimes and offences were first discovered were the Village Police. Who but the Village Chowkeydar or Policeman can give information to the superior authorities of the character, the domestic relations, nay, the political feeling of the villagers? Is it not desirable that there should be a way of knowing these matters? Who on the commission of crime in a village is so likely as the Chowkeydar to hit on the criminal, and give that assistance to

the Stipendiary Police as will lead to his detection? But this will not be done unless the Village Police are instructed and vigilantly supervised. They would doubtless require aid and direction in pursuing criminals, but unless the Village Police was effective in itself, the formation of an expensive Constabulary would be of little use. It appeared to him that the present Bill could not grapple with the subject so fully as was desirable; some of its provisions were no doubt improvements on the present state of things, but he thought, when these improvements were made, still the Village Police would not be what it ought to be. No doubt regular pay was a great and indispensable item, but what he would desire to see was a Village Police selected, and appointed, and controlled solely by a responsible Officer of Government. From what he had heard from his Honorable friend, the present amount paid by the zemindars was ample to furnish an efficient village force. And he was glad to see the Bill did provide for an enquiry into the liabilities of the parties who were bound to furnish the force. But he would much have preferred a measure which rendered it imperative on the local Government to appoint at once a Commissioner in every district, who might be of the grade of a Deputy Magistrate, whose special duty it should be to go through every village and make the enquiries in the most complete manner contemplated in the 15th Section of the Bill, and having ascertained what the pecuniary means of each village were, he should then appoint Chowkeydars or Policemen, instruct them in their duties, and distinctly explain to the villagers what the policeman's duty was, and what their own duty was; he should also appoint a Local Superintendent of every village or bustee of villages, and place the watch of the village or villages in him. A Police would be thus established simultaneously with the enquiry, and the officer who had conducted such enquiry would probably be found to be well qualified for a District Superintendent when the work was complete. Such a plan was tried with the most perfect success ten years ago in one of the largest zillahs in the Bombay Presidency. The Village Police, which till then had been totally disorganized, and a constant cause of anxiety to the Authorities and dread to the Stipendiary Police, in a very short space of time were converted into a well ordered and efficient watch and ward in every village. Violent crimes rapidly decreased, and during the eventful year of 1857, when there was sufficient cause of apprehension throughout that portion of the country which borders on one side of the Nizam's territories, the Village Police (Shetsundees as they were called) continued at their posts performing their duties. He recollected on two former occasions, many years since, that there had been insurrections in that very zillah, and that the persons principally concerned were the Shetsundees, in those days utterly neglected. He believed that the absence of any general rising in the Southern Mahratta Country during 1857 was mainly owing to the reform of the Village Police, brought about in 1848-49 under the direction of Sir George Clerk, who had been Governor of that Presidency.

MR. RICKETTS said, that his Honorable friend might have read much respecting Madras and Bombay Police, but he certainly had not read the Bill before the Council, for it contained all he desired to have. It provided for the employment of a Commissioner to adjust all disputes respecting the appointment and remuneration of Chowkeydars.

He (Mr. Ricketts) could not share in Mr. LeGeyt's regrets that the village system was not to be respected. Whatever village system there had been in Bengal had disappeared for nearly a century. No one now could tell exactly what it was, but he (Mr Ricketts) thought that its entire disappearance might be attributed to its worthlessness, and to its being too much opposed to fair-dealing and individual responsibility, to be at all likely to be approved by an English Magistrate. We were gone too far to search after village systems; we must endeavor to make the Rural Police suited to the other institutions of the Empire.

MR. RICKETTS' Motion was then carried, and the Bill was read a second time.

The Council adjourned.

Saturday, April 2, 1859.

PRESENT:

The Hon'ble J. P. Grant, Senior Member of the Council of the Governor-General, Presiding.

Hon. Lieut.-Genl. Sir James Outram,	E. Currie, Esq.,
Hon. H. Ricketts,	H. B. Harington, Esq., and
Hon. B. Peacock,	H. Forbes, Esq.
P. W. LeGeyt, Esq.,	

NABOB OF SURAT.

THE CLERK brought under the consideration of the Council a Petition of Meer Mooeenooddeen Khan Bukshee Bahadoor of Surat against the repeal of any part of Act XVIII of 1848.

MR. LEGEYT moved that the above Petition be referred to the Select Committee on the Bill "to amend Act XVIII of 1848 (for the administration of the estate of the late Nabob of Surat, and to continue privileges to his family.")

Agreed to.

PILOT COURTS (BENGAL).

MR. CURRIE presented the Report of the Select Committee on the Bill "to amend the law for the trial of Officers of the Bengal Pilot Service for breach of duty."

EMIGRATION.

MR. PEACOCK postponed his motion (which stood in the Orders of the Day) for the first reading of a Bill "to amend the law relating to the Emigration of Native Inhabitants of India" till Saturday next. He wished to refer to certain papers which he had applied for to ascertain the effect of a law lately passed in the Mauritius.

EMIGRATION TO ST. VINCENT.

MR. PEACOCK moved the first reading of a Bill "relating to the Emigration of Native Laborers to the British Colony of St. Vincent."

He said that the object of this Bill was to extend to St. Vincent the provisions of Act XXXI of 1855 (relating to the emigration of Native Laborers to the British Colonies of St. Lucia and Grenada). After the passing of that Act, an Act (No. 702) was passed by the Legislature of St. Vincent, which was transmitted to the Home Authorities, with a request that the same powers should be given to St. Vincent as had been given to St. Lucia and Grenada. By some mistake, however, the measure did not comply with the requisitions which had always been acted upon and required by the Government of India for the protection of the coolies. One was that a cooly should never contract to serve beyond the term of three years. The St. Vincent Law enabled the contract to be for any period. The Governor drew attention to this, and the law was amended, but by some mistake *five* and not *three* years had been inserted. That also was contrary to the principle adopted, according to which three years was the time allowed, upon the expiration of which the cooly was allowed to contract for service with any other employer.

There were one or two other alterations in the Act which appeared necessary. The Secretary to the late Court of Directors, in a letter addressed to the Secretary to the Board of Commissioners for India on the subject of this Act, wrote as follows:—

"I have laid before the Court of Directors of the East India Company Sir George Clerk's letter, dated 26th Ultimo, enclosing a copy of an Act passed by the Legislature of St. Vincent, relating to the introduction of Emigrants into that Colony, and their regulation when introduced, and with reference to the intention of the Secretary of State for the Colonies, to call for certain amendments suggested by Her Majesty's Emigration Commissioners, requesting that the Board of Commissioners may be furnished with the Court's opinion on the course proposed to be adopted.

"In reply, I am directed to remark that it has been usual to make a reference to the Government of India before pronouncing an opinion on Acts of the Colonial Legislatures relating to the Emigration of Natives of India. But the Act of the Legislature of St. Vincent being based on that under which Emigration is at present carried on to Grenada, and the amendments proposed by the Emigration Commissioners tending to remove the slight differences which exist between the two Acts, the Court will not make any objection to the course proposed to be taken by Lord Stanley. They propose, however, to forward a copy of the correspondence and of the Act to the Government of India, and they would wish to be understood that that Government will be at liberty to suggest any

further alterations which they may think desirable, and that it rests with the Government of India to decide whether and when effect is to be given to the Act as far as relates to the territories under the administration of the East India Company."

The amended Act had not yet arrived. But inasmuch as this Bill would take three months to pass into law, and as it would not take effect without an order of the Governor-General in Council fixing a day from which the Act should come into operation, he (Mr. Peacock) proposed to move the first reading of the Bill.

Section I of the Bill proposed to extend Acts XXXI of 1855 to St. Vincent. Section II provided that the Act should take effect from the day when the Governor-General of India in Council should notify in the Government Gazette that such Regulations had been provided and such measures taken as he might deem necessary for the protection of the emigrants during their residence in the Colony, and respecting their return to India.

The Bill was read a first time

MARKETS.

MR. CURRIE moved the first reading of a Bill "for regulating the establishment of Markets." He said, the object of this Bill was to empower the Magistrates to interfere for the purpose of regulating the establishment of new Markets, or Hauts as they are called in the language of the country. He would endeavor to explain to the Council what had been heretofore the practice in such cases. The law was altogether silent on the subject. The only mention of hauts in the Regulations was in connection with the abolition of the Sayer Duties. By Regulation XXVII. 1793 of the Bengal Code, all market dues were abolished, and compensation was given to the landholders for the loss of the profits which they had derived from them. In consequence of this compensation resort to the hauts was declared to be perfectly free, and the landholders were restricted from demanding any payment for the use of the ground occupied by the hauts. This restriction, he supposed, did not extend to markets established since upon ground which was not so occupied at the time of the settlement. However that might be, new hauts were continually established, and were a source of profit to the owners. Such being the case, it was not to be supposed that a new haut could be established in the neighborhood of an old one without giving rise to disputes; and formerly the practice of Magistrates, when such disputes occurred, was to interfere for their adjustment, either by prohibiting the establishment of the new haut, or by fixing the days on which it was to be held, so as to interfere as little as possible with the old established one. This seemed to have been the recognized practice, for he found in the Constructions of the Nizamut Adawlut mention of an order of the Benares Court of Circuit in 1823 on the subject of a new haut; and in 1827 the Court of Nizamut Adawlut (Mr. Courtney Smith and Mr. Ross presiding) upheld an order of the Magistrate of Sylhet fixing the days upon which two rival hauts were to be held But the Sudder Court thought proper, in 1830, to issue a Circular Order declaratory of the rights of zemindars to establish hauts on their own lands, and disallowing any interference on the part of the Magistrates, as ruled in the following extract from their proceedings:—

"The Court decided, on an appeal from an order of the Commissioner of Circuit of the 15th Division, that zemindars and the proprietors of land have a right to establish hauts or fairs on their own lands, and to hold them on any day that they think proper; and that it is not competent to the Magistrates to prohibit the establishment of a haut or fair, or to fix the day on which it may be held, on the plea of its interfering with the right of a neighboring haut-holder, or on any other ground."

Whether this order was right or wrong, it was not for him to say. It was certainly opposed to the previous practice, and to what might be called the common law of the country, and its consequences had been most pernicious. He had received within the last twelve months two communications from the Bengal Government relating to affrays and disturbances arising out of the establishment of new hauts, and illustrative of the evils which had resulted from tying the hands of the Magistrate. The

Magistrate was expected to prevent breaches of the peace, but he was restrained from settling the disputes by which alone such occurrences could be effectually prevented . .

The first letter was from the Commissioner of the Nuddea Division of the 18th May 1858. He said :—

" In reply to your letter No. 884, dated 4th March last, with its enclosed petition from the Boses of Doorgapore, which I beg to return, I have the honor to quote as follows from the Jessore Magistrate's report on the statements made by the petitioner.

The new bazar and haut established by Judoo Bhoosun Deb Roy at Telendauparrah is at a distance of about half or three quarters of a mile from the Kedjoorah bazar; it has been established upwards of a year; it was the primary cause of all the disturbances between the Ghod Ghat concern and Judoo Bhoosun Deb Roy. It was, in my opinion, established solely with a view to damage the old bazar of Kedjoorah, and the haut days are the same as those of the old haut. * * * * * * * * *

" The law in its present state under its present construction recognizes the legality of thus establishing markets to the detriment and annoyance of the owners of old hauts, and such a proceeding almost invariably leads to serious breaches of the public peace." * * *

So far was the report of the Magistrate; the Commissioner went on to observe : -

" I have deferred submitting the above in order to have leisure to make a few remarks on the question of hauts generally. They are at present, as His Honor the Lieutenant-Governor knows, a fruitful source of harrassment to the marketing classes, and often of serious affray between the retainers of the haut owners. The Muthoorapore case, to which Mr. Molony refers, and in which Mr Oram so nearly lost his life last year, grew from this source, or, to speak perhaps more correctly, from the restriction which superior authority have imposed on Magistrates in dealing with incessant disputes between rival haut owners.

" It is for the good of the country and of the public generally that there should be the freest competition between landowners for the custom of the marketing classes. Generally speaking an old-established haut must be either very badly managed, or must have become difficult or inconvenient of access before it will be deserted in favor of a new one established in the neighborhood, so that physical force has to be employed to divert marketers from the ordinary resort Similarly physical force is then engaged for their protection, and pitched battles frequently ensued. * * * * * * *

" A Magistrate generally has timely warning of the probability of a disturbance, and he may take precautionary measures by posting his police judiciously, or by binding down the owners of the hauts or their local managers, but under the ruling of the Nizamut Court now in force, he cannot strike effectually at the root of the danger which threatens, and cause the new haut to be held on a day different from that on which the old haut has always been held. * * * * *

" No less than four heavy affrays arising from haut disputes, and attended in, I think, three cases with loss of life, occurred in Jessore alone in 1856."

The Muthoorapore case to which the Commissioner alluded was reported in the Nizamut Adawlut's Reports of Cases for January 1858. Forty-two defendants were charged with committing a riotous attack upon the Factory, attended with arson, the severe wounding of Mr. George Oram and slight wounding of Ramnaryun Sing and others, the plunder of property valued at Rs. 308-9 belonging to the Ghod Ghaut concern, and Rs. 405-4 belonging to Mr George Oram, and with resistance of the Police.

The Sessions Judge, after giving an account of a tumultuous attack upon the Factory, remarked —

" That the attack took place as above described, that a building used as an office was fired by the rioters, and that Mr. Oram was severely wounded by spears, sticks, and stones (evidence of the Civil Assistant Surgeon), cannot admit of the smallest doubt."

It seemed from the Report that there was some dispute about the sowing of Indigo, but the original cause of quarrel was the establishment of a new haut. The Sessions Judge said : —

" It appeared that some months previously a dispute had arisen between the Rajah of Nuldunga and Mr Oram regarding the erection of a new bazar by the former. The case being brought under Act IV of 1840 by the Magistrate, was by him decided in favor of Mr. Oram, but in appeal this decision was reversed, and possession adjudged to the Rajah. The Court of Sessions considered that, however the erection of such a bazar might be made for the purpose of annoyance, and however prejudicial to order, peace, and security might be the proximity of a new bazar to one of old standing, yet that neither in this state of the law nor in the particulars of the case was there anything to deprive the Rajah of the right to establish his new bazar on a piece of ground of which he had taken a lease for the purpose.

On the general subject the Sessions Judge made the following remarks:—

"Two other points force themselves on the notice of the Court, and I deem it right to advert to them, as illustrative of the difficulty of preventing or repressing agrarian outrage in this part of the country. The first is the state of the law regarding the erection of new or rival bazars close to bazars of long standing. There is nothing now to prevent any rich or powerful person from setting up a new bazar with the obvious intention of ruining or annoying an adversary. From this cause inevitably ensue attacks on the unoffending parties, in order to force them to desert the old bazar, and to purchase at the new one, retaliations from the opposite party, breaches of the peace, subversion of quiet and order, and protracted litigation. This state of the law, which is considered to be essential to trade or favorable to an abundance of the necessaries of life, is, I have no hesitation in saying, quite unsuited to the condition of this country, unsound in theory, and unsafe in practice. It is not once in ten times that a new bazar is opened to meet the advanced increased wants of the community, or to supply a mart essential for the necessaries of life. In most cases it is opened from purposes of revenge and annoyance, and we all know to what this leads in such a country as Bengal. But while such be the state of the law, the Court can only take care that, right or wrong, convenient or inconvenient, it shall be impartially carried out. The obvious remedy is for the Legislature to enact that new or rival bazars shall not be established within a certain distance of old ones without the consent of the civil authority. If a new mart be really wanted for the convenience of buyers and sellers, there could be no difficulty in procuring such consent. If it be established, as is so often the case, for unfair purposes, incompatible with peace and order, it should be peremptorily closed, or consent be refused for its establishment."

So much for the Jessore case. Disputes of the kind, however, were not limited to any particular District or to a single Province. He had been told that similar disputes frequently occurred in the North-Western Provinces, and they were certainly common in all the Districts of Bengal.

The other communication to which he had referred was a report from the Joint Magistrate of Bograh regarding a dispute about a haut at a place called Sultanpore. The Joint Magistrate said:—

"This haut, the property of Anundonath Chowdry and Kistomoni Debya, of Pergunnah Khatta, is a long established one, and one of the principal grain marts on the little Jooboona river. The quarrel arose from an attempt on the part of Huronath Chowdry of Dubulhattee in the Rajshahye District, to set up an opposition market at a place called Par Nowgaon on the west bank of the river, immediately over against Sultanpore. To effect this purpose it was necessary to entice the Mahajuns of the old haut to settle in the new one, and to compel the ryots who had been accustomed to attend the one to transfer their dealings to the other." * * * * *

A Mohurir and some Burkundazes were sent to keep the peace. The report continues:—

"The day before the next haut was to be held the Mohurir wrote to the Darogah to say that he had heard that Noyin Khan, Naib of the Akhira Cutcherry, and others on the part of Huronath Chowdry, had collected men secretly, and intended to force the people to attend their new haut. The Darogah went to the spot with an increased force, and no actual disturbance took place, though there were evident signs of an intention on Noyin Khan's part to compel the attendance of the ryots at his master's haut. * * * * *

"Meantime some ryots of Anundonath Chowdry had put in a petition to me on the 19th, complaining against Noyin Khan, Kisto Comar Buxi, and others, for seizing them and for carrying them to their haut, and on their refusal to sell their goods there plundering and beating them. After considerable delay Noyin Khan and some others surrendered, and were convicted by me and imprisoned.

"The argument that interference with the establishment of rival hauts imposes checks on the development of trade in the country, which is the only one I ever heard raised against such interference, shows an entire ignorance of the practical effect of competition between two contiguous hauts held on the same day. The ultimate result is in every case either that one haut destroys the other entirely, or that both are deserted for some more peaceable place of trade. So far is trade from being facilitated, that it comes completely to a stand-still whenever these quarrels arise.

* * * * * * *

"In the present instance the greatest injury has been inflicted on all parties. Both the shop-keepers and the cultivators all round have been prevented from transacting by the fear of being plundered, and although the police might prevent an actual outbreak in the place itself, much oppression has been occasioned without doubt by peons and lattials scattered over the path-ways leading from neighboring villages, who have waylaid the people and plundered them on the way into the haut. The actual sum taken from any one person in this way is so small, that they rather put up with the loss than complain."

Now he thought that a case had been clearly made out for the interference of the Legislature. Indeed,

when such facts were brought to its notice as those which he had just related—facts which had resulted solely from the defective state of the law—the Legislature would be inexcusable if it did not interfere. On the ground of principle there could be no objection to such interference. He probably would not be wrong in saying, that in no other country in the world, perhaps in no other part of this country than the Regulation Districts of the Bengal Presidency, were public markets established at the mere pleasure of the landholders without any intervention on the part of Government.

Such was certainly not the practice in England. The Council were doubtless aware that in England the establishment of Public Markets was a part of the Royal prerogative. He found it laid down in Blackstone that—

"Markets and fairs, with the tolls thereunto belonging, * * * * can only be set up by virtue of the grant of the Crown, or by long and immemorial usage and prescription, which presupposes such a grant. The limitation of these public resorts to such time and such place as may be most convenient for the neighborhood, forms a part of economics or domestic polity; which, considering the kingdom as a large family, and the sovereign as the master of it, he clearly has a right to dispose and order as he pleases."

Such was the principle recognized in England, and it was certainly consistent with native opinions and practice in this country. He had not been able to ascertain exactly how the case stood in the other Presidencies. Circumstances there were so different, that the want which had been so strongly felt in the two divisions of the Bengal Presidency might not have been experienced at Madras and Bombay. He had, however, so prepared the Bill as to make it generally applicable. Any parts of the country for which it might be considered unsuited could easily be excluded from its operation.

The general purport of the Bill was this. It prohibited the establishment of a new market without the permission of the Magistrate. Public notice was to be given of any application to establish a market, and the Magistrate was to receive and enquire into objections, and to pass such orders as might be necessary to prevent breaches of the peace, and inconvenience to the buyers and sellers in the neighborhood. The orders passed by Magistrates would be appealable to the Commissioner of Police, whose orders, subject to the control of the local Government, would be final.

He proposed to extend the provisions of the Act to those markets which had been recently instituted—say within the last two years.

The Bill was read a first time.

VILLAGE WATCHMEN (BENGAL).

MR. RICKETTS moved that the Bill "to regulate the appointment, employment, and dismissal of Village Watchmen in the territories under the Government of the Lieutenant-Governor of Bengal" be referred to a Select Committee consisting of Mr. LeGeyt, Mr. Currie, Mr. Harington, and the Mover.

Agreed to.

MR. RICKETTS said, he had lately heard, in connection with the above Bill, that there was extensive litigation now going on in the districts of Hooghly, East and West Burdwan, and Beerbhoom, respecting the appointment and remuneration of Chowkeydars. As it was very necessary that the Council should have complete information as to the extent and nature of the litigation, and in what manner the cases were disposed of, he begged leave to move that the Clerk of the Council address a letter to the Government of Bengal, requesting that the Honorable the Lieutenant Governor would be good enough to direct the Judges of those districts to prepare and submit to the Council reports on the subject, and also that His Honor would direct the Superintendent of Legal Affairs to forward to the Clerk copies of any papers in his office connected with it.

MR. PEACOCK said, it was not his intention to object to the motion. But he thought it necessary to remark that there were doubts entertained in high quarters as to the power of the Legislative Council to address the Local Governments directly. He would remind Honorable Members of the debate which took place not long ago on the motion of the Honorable Member for Madras relating to Oaths. Probably the Lieutenant-Governor of Ben-

gal would not object, in a case of this kind, to comply with the requisition of the Council. But unless the Council strictly had the power, he (Mr. Peacock) thought that the better course would be to ask the Governor-General in Council in his executive capacity to procure the required information. He inclined to think that this Council had not the power to call for information from the local Governments.

MR. RICKETTS said, he did not see that there could be any doubt as to the power of this Council to call for information from any part of India. The Council stood in the same position as the Supreme Government in the Legislative Department formerly stood; and if they had the power to call for information, this Council also had the power. In fact, the power had already been exercised with regard to the Oaths question, and he had heard no objection to it. Although on such questions he was always inclined to bow to the opinion of his Honorable and learned friend opposite (Mr. Peacock), he should be very sorry to give up the power which was, he believed, vested in the Council.

MR. PEACOCK said, he did not think that in a case of this kind the information would be refused. But the question was, had they or had they not power to call for information? The Governor-General in Council in his executive capacity had such a power, but he doubted whether the Governor-General in the Legislative Council had the same power. As there were doubts on the subject, the better way would be to consider and determine the whole question.

MR. LEGEYT asked what powers the Governor-General in Council in his executive capacity had in such matters?

MR. PEACOCK said, that by the Charter Act the Governor-General in Council was empowered to enforce obedience to his requisition.

MR. LEGEYT.—Was not this Council the Governor-General in Council?

MR. PEACOCK.—This Council was the Governor-General in Council for the purpose of making Laws and Regulations only. If the question were litigated, he apprehended that it would be decided that this Council had not the power to call for information. He confessed that he had not accurately examined the question. But his impression at present was that, being a Council only for making Laws and Regulations, they had not the power to enforce orders.

MR. CURRIE said that, in all questions, but more especially in questions of such a nature as that now before the Council, the opinion of the Honorable and learned Member opposite (Mr. Peacock) must be allowed to carry great weight. Still he must say that he agreed entirely with the Honorable Member on his right, Mr. Ricketts. There could be no question that this Council was the Governor-General in Council for the making of Laws or Regulations only. But it could never have been intended that they should make Laws or Regulations which might prove inappropriate or inapplicable; and if in order to the framing of a Law or Regulation any information was found necessary, surely the Council must, from the very nature of its functions, possess the power of calling for it. If it came to a question of precedent, he would at once establish the precedent.

MR. GRANT said, the question was one of considerable importance. He must confess that, as then advised, he did not participate in the doubts suggested by the Honorable and learned Member on the right. He considered that there were not two Councils but one; that this Assembly was the Governor-General in Council, the Council when met for the purpose of making Laws being the same as when met for executive administration, with the addition of certain merely legislative Members. Although the constitution of the Legislative Council had been changed in this respect, it appeared to him that it was very much like the old Council sitting in the Legislative Department. He apprehended, therefore, that whatever the old Council, sitting in the Legislative Department, could have properly done, this Council could properly do. As to their legal power to call for information from the public, in order to assist them in their preparation of laws, he did not know how that matter stood, and the Council did not claim to exercise such a power. But as to their power to call upon public officers for such information, that was no more than used to be done for

merly by the Governor-General in Council sitting in the Legislative Department; and he (Mr. Grant) was sure that no public officer, high or low, would refuse to give this Council any such information when called upon. If he did refuse, he (Mr. Grant) did not think that any necessary orders could be passed by this Council, any more than formerly such orders could have been properly passed in the Legislative Department. But were such a most improbable case to arise, he had no doubt that the Governor-General in Council, sitting in the Executive Department, would pass proper orders. If therefore the question must now be decided, he should vote in favor of the motion. He would suggest, however, that in a matter of such importance the whole question might advantageously be referred to a Select Committee with a view to its being thoroughly discussed and definitively settled as to whether or not this Council had the power in question. But if the Honorable Member on his left pressed his motion, he (Mr. Grant) would vote for it.

MR. PEACOCK said, it was not his intention to oppose the motion. He did not see any objection to the call now proposed being made; he had no doubt the Lieutenant-Governor would comply with it. But as doubts were entertained on the general subject, the suggestion of the President seemed to him a very proper one and worthy of adoption.

MR. CURRIE said, that the question, or at least one very like it, had been for more than two years before a Select Committee, on the motion of the Honorable Member for Bombay.

MR. RICKETTS wished the question to be put to the vote.

The Motion was put and carried.

RECOVERY OF RENT (BENGAL).

MR. CURRIE gave notice that he would, on Saturday, the 9th Instant, move for a Committee of the whole Council on the Bill "to amend the law relating to the recovery of Rent in the Presidency of Fort William in Bengal."

The Council adjourned at noon on the Motion of Sir James Outram.

Saturday, April 9, 1859.

PRESENT:

The Hon'ble J. P. Grant, Senior Member of the Council of the Govr.-Genl., Presiding.

Hon. Lieut.-Genl. Sir J. Outram, Hon. H. Ricketts, Hon. B. Peacock, P. W. LeGeyt, Esq., E. Currie, Esq, H. B. Harington, Esq., H. Forbes, Esq., and Hon. Sir C. R. M. Jackson.

EMIGRATION.

MR. PEACOCK moved the first reading of a Bill "to amend the law relating to the Emigration of Native Inhabitants of India."

He said the Mauritius Government had lately proposed alterations in the law relating to the emigration of coolies. One proposal was to authorize contracts to be made in India for service at the Mauritius. According to the present law no contract to serve could be entered into by the coolie until forty-eight hours after his arrival in that Island. This was by virtue of an order of the Queen in Council, which had the force of law there. When a law was passed in India authorizing Emigration to the Mauritius, this was one of the terms contemplated by the Act of the Legislative Council. The working of this condition had, however, been found injurious not only to the Mauritius Planter, but also to the Emigrants. In a letter, dated June 30, 1858, the Governor pointed out the evils attendant upon that system. He wrote:—

"The allusions made in the correspondence now under reply, and in the report of Sir Frederick Rogers, to the Ordinances No. 15 of 1854 and No. 12 of 1855, induce me to take the present opportunity of entering more at large into the subject of the much vexed question that has been anxiously agitated here. With reference to the introduction of the 6th Clause of No. 12 of 1855, which gives the Immigrant, on his arrival in this country, the full and free selection of his own employer, notwithstanding he may have been expressly engaged in India, for the services of a particular Planter, by whom the whole expense of his introduction has been fully defrayed."

That Ordinance authorized the Immigrant, though conveyed to the Mauritius at the expense of one Planter, to

select his own master within forty-eight hours after his arrival at the depôt, the Planter with whom he engaged being bound to repay the expenses of the introduction of the coolie. But this caused great difficulties, because the Planter who had indented for and who expected the coolies found that by means of bribery on the part of other Planters, and by the employment of Crimps, the coolies were induced to engage with others. The Governor said:—

"And I shall do so, with reference to a communication I have received from the Chamber of Agriculture, and another which I have since received from its sister society, the Chamber of Commerce, of both of which, as well as of my replies to these communications, I have the honor to enclose copies, to which I shall presently more particularly refer."

Both these Chambers applied to the Government for an alteration of the law on these grounds. The Governor then went on to speak of the distribution of the coolies. He said :—

"Upon the former, namely the distribution and first employment of new Immigrants, I fear I shall find the existing difficulties likely to last as long as there remains so great a disparity between the supply and the demand of labor, and as long as the delusion lasts that the new Immigrants are wholly left to their own free selection, when the contrary fact unquestionably is, that they are subjugated to the designs and arrangements of the Crimps and Sirdars, who profit by their national peculiarities or credulities."

In another part he said :—

"But I have found here so many obstacles to any such arrangements, superinduced on the one hand by the demand for labor, which has led to every stratagem and expedient for procuring it through irregular and improper channels, and on the other hand by the capricious determination of the Immigrant to follow the selection that is made for him by the Sirdar, in preference to the more advantageous one recommended by the Government, that it has been quite impossible to carry out that fair distribution of Immigrants which, under other circumstances, would be the best and most equitable mode of rateably adjusting the supply to the demand."

He went on to show that Sirdars employed by Planters induced the coolies to refuse to fulfil their contracts. He also pointed out that it was no advantage to the coolie, since he could not possibly in forty-eight hours know the characters of particular Planters. The Governor of Mauritius, therefore, proposed to alter the law, and to allow contracts to be made in this country with emigrants, before they proceeded to Mauritius, to serve particular individuals, and if not to serve individuals, then to serve such Planters as the Mauritius Government should allot them to. The Court of Directors, after communication with the authorities at home, wrote :—

"You will observe that we have expressed our willingness to sanction the alteration in this respect proposed by the Government of the Mauritius, as finally approved by Her Majesty's Secretary of State for the Colonies; and we leave it to you to prescribe, in communication with the Government of the Mauritius, the precise terms and conditions on which the proposed scheme shall be carried out."

Since this Despatch the Mauritius Government had sent here an Ordinance and some Regulations made pursuant to it. It appeared to him that these were certainly calculated to benefit the Immigrants, and to enable them to enter into contracts quite as beneficial as if they had contracted after their arrival at Mauritius.

First, it was proposed to fix annually the average rate of wages, being a fair rate at Mauritius. A copy of this document was to be sent here and hung up in the Office of the Emigration Agent. Any person desiring to engage Coolies was to deposit with the Protector of Emigrants in Mauritius a requisition specifying the number of Immigrants required by him—in what district in Mauritius and for what kind of service or labor they were required—the Presidency of India from which he wished them to be sent, and whether he was willing to give wages and allowances on the Government scale for the time being, or any other and what wages and allowances.

There was a check on the Planter, for if he was an unfit person, the Protector at Mauritius and the Emigration Agent here would decline to comply with this requisition.

It then provided for allowing Special Agents licensed by the Protector of Immigrants at Mauritius and here, to

recruit in India for the Mauritius Planters, but the laborers thus recruited were not to be allowed to leave this country without passing through the Emigration Agent's Office, and receiving the advice of the agent in the same way as if recruited by him or his agents as at present:—

"Every Principal shall be responsible for the wrongs and breaches of Regulations committed by his agent, in so far as that the Government may refuse to accept future nominations of agents by employers whose agents shall have more than once wilfully committed any such wrongs or breaches.

"When Special Agents have been employed and licensed, no recruiting by any Government Recruiting Agent, or any of his Subordinates, shall be expected or relied on by the employers; but that portion of the service shall rest entirely with the licensed Special Agent, and those employed by him subject to the control of the Government Emigration Agent at the Presidency.

"In case, however, the Special Agent shall die, or withdraw from his agency, or in case license shall be refused to such agent, the Emigration Agent may and shall allow the Government Recruiting Agents to act in regard to the requisition of the Principal of such agent in the same way as if no Special Agent had been appointed.

"When Special Agents are employed, the engagement of Immigrants for agricultural labor may be either at the rate of wages and allowances in the Government Scale for the time being, or at any other rate which shall be at least equivalent thereto; and which shall be set forth in the requisition."

So that the agent could not engage for a private coolie at a lower rate than the Government rate, or a sum equivalent to it.

"When Special Agents are not employed, the engagement of ordinary agricultural laborers shall be at the wages and allowances in the said Government scales."

The coolies had the Protector at Mauritius, and the Emigration Agent and Protector here to see that they were not imposed upon:—

"The Emigration Agent at each dependency shall, before any contract shall be completed, explain the same fully to the Immigrant, with the aid (if necessary) of a duly qualified Interpreter, and shall take all proper precautions to prevent the Immigrant from being induced to contract by any fraud, falsehood, or unfair means or representations.

"If the Emigration Agent shall be satisfied that the contract is fully understood by the Immigrant, and, if not upon the Government scale, that it is fair and reasonable, he shall, as soon as possible have the same signed in his presence by the Immigrant and by the Special Agent (if any) of the employer, with their names and marks, or he shall certify the same by a docket signed by himself.

"If the Special Agent for the employer shall not be present at the time, the Emigration Agent may sign the contract in his absence, and the contract shall, in that case, be equally valid and binding as if signed also by the Special Agent; and no contract bearing to be so signed shall be challengeable on the ground that the Special Agent not subscribing was present at the time."

The contract thus made might be enforced at Mauritius.

It appeared to him, therefore, that every thing possible was here provided for. It provided that the Special Agents should be under the direction and control of the Emigration Agent here. What he proposed by the present Bill was to authorize contracts to be made here, provided they were made in the presence of certain officers. It was perhaps doubtful whether Act XIV of 1839 was or was not in force as to emigration to Mauritius. He did not feel confident that it was so, and he therefore proposed to repeal so much of that Act as subjects to fine persons making contracts with natives of India for labor to be performed in Mauritius, or knowingly abetting or aiding any native of India in emigrating to that Colony. He believed it was intended to repeal that Act by the Mauritius Act XV of 1842, but the repealing Section was not precisely in the words used in the Act authorizing Emigration to the West Indies, and the Act lately passed for St. Lucia and Grenada, for in those Acts it was quite clear that contracts might be entered into here with native laborers for service in the West Indies. [Mr. Peacock here read the main provisions of the Bill]

He also proposed to repeal Acts XXI of 1843, VIII of 1847, and IV of 1852, so far as they required a certificate to the effect that the emigrant has been engaged "on the part of Government;" for now if contracts were to be made by private individuals this certificate would not be applicable. He also proposed that the Governor-General in Council should be invested with authority to extend the provisions of the Act.

Application had been made on behalf of British Guiana that it might be at liberty to contract in the same way. But this had not yet been sanctioned by the Governor-General, though, if it should be sanctioned, this Act might be declared to apply to such Emigration also.

The Government, after a careful consideration of the Mauritius Ordinance, had consented to laborers being allowed to leave India on the principle laid down in that law. In cases where the coolie was not employed by a particular individual, the Emigration Agent here would engage him on the part of Government, and the Mauritius Government would allot him to such master as it thought fit, at wages not less than the certified rate. The coolie, if he chose, might enter into a contract for three years. If he fully understood the terms, there was no reason why he should not be bound by the contract made here as he would be bound by a contract made at the depôt at Mauritius. It would be the interest of the Mauritius Government to take care that the coolies were not maltreated by the Planters. It appeared to him, therefore, that the law would protect the natives of this country emigrating to Mauritius from injustice and oppression, and gave them the protection of Government instead of (as at present) the protection of Crimps.

The Bill was read a first time.

RAILWAY CONTRACTORS AND WORKMEN.

MR. LEGEYT moved the first reading of a Bill "to empower Magistrates to decide disputes between contractors and workmen engaged in railway and other public works."

He said, he had been requested by the Government of Bombay to bring forward a Bill to the above effect. The Council were aware that on the other side of Bombay very extensive and important railway works were now in progress, and a large number of laborers was now employed thereon. Those men were employed in a part of the country far away from any large town, or from any resident Magistrates. The laborers were for the most part men of the wildest and most uncivilized habits —Wuddias, Bildars, Maugs, and the like, who had been collected from the hills, and from all parts of the country. The two first were vagrant tribes, who were generally employed as stone-cutters and in the excavation of tanks. These men had contracted for service with Sub-contractors. For some time past there had been much dissatisfaction and many heartburnings on the part of the laborers, and on the 20th of January last things came to a crisis. The men attacked their employers, and one of the European contractors was killed, but whether by the workmen, or by an accidental shot from his own party, or from his own fire-arms, had not yet been clearly ascertained. However the man was killed, and the progress of the works was put to great jeopardy. Since this occurrence the Government of Bombay had appointed an Assistant Magistrate for the line of railway, so as to keep the peace among these wild unruly persons.

Enquiries into the cause of this violent conduct were set on foot, and the result was, that it appeared that for months past the workmen had not been paid their full wages, and that some of them had been kept in arrears for three or four months, and some for more. It is probable this arose from a fear that if these laborers were not kept in arrears they would desert. It became advisable to devise some measures to remedy this state of things. The Bhore Ghaut was situate partly in the Poona and partly in the Northern Concan.

The Bombay Government had come to the opinion that an Officer should be invested with special and summary jurisdiction to decide all disputes of a pecuniary nature between such workmen and their employers, and that this power should be vested in a Magistrate or Assistant Magistrate. They had requested him to frame a Bill for this purpose, and accordingly this Bill had been prepared, empowering a Magistrate to decide such disputes. The Bill defined a summary procedure, and provided for the execution and enforcement of decrees. As the class of cases proposed to be tried under the Act would be of the most simple description, he proposed to make the decisions of the Magistrate final. He had also thought it advisable to make the Bill general,

with a proviso leaving it to the local Government of any Presidency or place to put it in force as occasion might require. He did not know that he had anything further to add. The annexures to the Bill would fully disclose the state of things which had given rise to such a measure.

The Bill was read a first time.

POLICE (PRESIDENCY TOWNS AND STRAITS SETTLEMENT).

MR. CURRIE moved the second reading of the Bill "to amend Act XIII of 1856 (for regulating the Police of the Towns of Calcutta, Madras, and Bombay, and the several stations of the Settlement of Prince of Wales' Island, Singapore, and Malacca)."

MR. LEGEYT said, he regretted that this Bill contained no provision for regulating the fares of hackney carriages and palankeens. It had been brought to his notice that it would be very desirable to make such a provision. He believed that the same complaint had been made at Madras, where he believed, prior to the passing of the Police Act XIII of 1856, there was a law on the subject. He thought it would be a good instruction to the Select Committee to enquire into the necessity of some such regulation. By Act IV of 1841, such matters were regulated in Bombay, perhaps not in the most perfect form, but still to the convenience of the public and protection of the owners of such conveyances.

MR. CURRIE said, he had looked through all the communications which had been received on the subject of the Police Act, and all the amendments suggested in those communications which he had thought it desirable to adopt had been inserted in the Bill. Of course, if when the Bill was published any further suggestions were made, they would be considered by the Select Committee, who would adopt or reject them as it might think proper.

The Motion was then put and carried, and the Bill read a second time.

RECOVERY OF RENTS (BENGAL).

MR. CURRIE moved that the Council resolve itself into a Committee on the Bill "to amend the law relating to the recovery of Rent in the Presidency of Fort William in Bengal;" and that the Committee be instructed to consider the Bill in the amended form in which the Select Committee had recommended it to be passed.

Agreed to.

Sections 1 to XI were passed as they stood.

Section XII was passed with the insertion of "two hundred" in the blank before the word "Rupees," as the maximum of damages to be recovered for extorting payment of rent by duress.

Sections XIII to XVI were passed as they stood.

Section XVII was passed after verbal amendments.

MR. RICKETTS proposed to move the introduction here of the new Section of which he had given notice, and which had reference to Clause 2, Section XVII. He thought there would be insuperable or nearly insuperable difficulties in carrying out the provisions of the Clause. It said that the rent would not be liable to enhancement, unless the rate paid was below that prevailing in adjacent places "for land of a similar description." It was most difficult to ascertain the description of land. As his Honorable friend the Member for Bombay knew, they had been trying for a long time in that Presidency to lay down the different descriptions of land with, he believed, but incomplete success. The varieties in the descriptions of land were so many, and the causes of the differences so difficult to be ascertained, that to define correctly the description of land was next to an impossibility.

Some idea of the difficulty might be formed from the Bombay classification of land. He found 9 sorts described—

1st sort.—A mixture of minute fragments, or nodules of limestone.

2nd sort.—Same as above, only that the nodules are larger.

Now imagine the difficulty of deciding an issue as to the size of the nodules of limestone!

3rd sort.—Sloping surface.

4th sort.—Mixture of sand.

5th sort.—Want of cohesion among the constituent particles of the soil arising from the presence of fine sand.

6th sort.—Liable to be swept over by running water.

7th sort.—Excess of mixture from surface springs.

8th sort.—Clayey soil, when dry, turns very hard, and once wetted does not dry soon. Here again might be a very pretty issue, how long a clayey soil took to dry!

Parties to suits would soon find out how to present puzzling issues of this sort, which would make the adjudication of such suits extremely tedious and difficult.

Again the Clause spoke of land "with similar advantages." Upon this point there might be a dozen issues. Advantages and disadvantages might depend on markets, canals, railroads, irrigation, absence or presence of mahajuns and indigo planters, wild elephants, deer, hogs, grasshoppers, caterpillars. All these things and fifty others might have to be considered in considering the advantages and disadvantages of a tenure compared with adjacent lands.

The object of the proposed amendment was to remedy these difficulties, and to enable the Collector to dispose of a case in a manner likely to be acceptable to the parties, and capable of easy proof. The Collector was required to ascertain the market value of the average gross produce of the land, and to declare two-fifths of the ascertained value to be the rent payable for such land. And there was a proviso empowering the Court to declare a less sum than two-fifths to be the rental payable, if, owing to special circumstances, the cultivation must be attended with more than ordinary expense.

It had been suggested to him that, if there was to be such a proviso in favor of ryots, there should be a similar proviso in favor of zemindars. He did not think that was necessary. He had lately been told that in Batavia, where such matters were exceedingly well managed by the Dutch, a ryot was always entitled to a receipt in full for his year's rent if he made over one-fourth of his crop to his zemindar. He (Mr. Ricketts) did not wish to go so far as that, but he believed that the method of adjustment he proposed would in practice be acceptable to all parties not having any documents to guide the Court to a decision.

With these remarks he moved that the following new Section be introduced after Section XVII:—

"If in a suit for enhancement or for diminution of a ryot's rent the evidence produced by the parties shall fail to show what rate of rent is equitably assessable on the land in the ryot's possession, in such case the Collector shall proceed to ascertain the market value of the average gross produce of the land, and shall declare two-fifths of the ascertained value to be the rent payable for such land. Provided always that it shall be competent to the Court to declare a sum less than two-fifths of the value of the gross produce to be the rental payable, if there are any special circumstances owing to which the cultivation of the land must necessarily be attended with more than ordinary expense. When the rent of a ryot's holding has been ascertained as above provided, it shall not, unless on special grounds, be again liable to question for a period of twelve years."

MR. CURRIE said, he regretted that he felt it to be his duty to oppose the introduction of the Section. The Honorable Member had brought it forward in Select Committee, and the Select Committee had determined not to adopt it. According to the Section the Collector was to "ascertain the market value of the average gross produce of the land." In the case of rice land on which the same crop was grown year after year, there might be little difficulty in doing this But where there was a rotation of crops, the crops varying greatly in value, and perhaps not following in any regular succession, he did not see how the Collector was to ascertain the value of the produce. In order to this it would be necessary to find the average value of the different crops, and the materials for this would not be easily obtainable. But the Section went on to prescribe a condition which would certainly be attended with much greater difficulties than any which it was intended to remedy. It provided that the Court should fix the rent at less than the usual proportion of the produce, "if there were any special circumstances owing to which the cultivation of the land must necessarily be attended with more than ordinary expense." Now it appeared to him that an enquiry into these special circumstances must involve elements of much greater doubt and difficulty than would be found in an enquiry as to the prevailing

rate paid for land of a similar description and with similar advantages. He understood the Honorable Member to object to the terms "similar description." The Honorable Member had referred to the Bombay system of classifying soils, and seemed to think that classification would confuse rather than assist in determining rates of rent. But such was not the case. In most parts of the country there were known descriptions of soils, according to which the lands of a village were classified, and this was one though of course not the only condition according to which the rate of rent was fixed.

It was also proposed that the Collector should "declare two-fifths of the ascertained value to be the rent payable for the land." He did not know upon what ground the Honorable Member had assumed this proportion. It was quite true that, when rents were paid in kind, it was the practice for the Zemindar and the ryot to take half and half—grain rents obtained generally where for want of the means of irrigation or other causes the crop was uncertain—and if the Zemindar shared the produce he also shared the risk. But when it came to the commutation of a proportion of the produce into a money rent to be paid under all circumstances, he apprehended that two-fifths would be found greatly too high. In the Institutes of Akbar it was prescribed that the share of the Sirkar, that was the proportion to be paid by the ryot, should in no case exceed one-fourth; and the Honorable Gentleman had told them that one-fourth was the prescribed proportion in Batavia. But he apprehended that even one-fourth would be found to be very high for a money rent. On the whole, he (Mr. Currie) thought that they would run very great risk in assuming any arbitrary proportion, and he felt confident that the rule prescribed in Section XVII was much safer and more free from difficulty.

MR. HARINGTON said, he concurred generally in what had fallen from the Honorable Member for Bengal. The Section, moreover, which the Honorable Member of Council wished to introduce, appeared to him to be at variance with the general and, as he thought, sound principle, that the responsibility of establishing a claim ordinarily lay upon the party making the claim. Upon this principle, if a landlord sued to enhance the rent paid by a ryot, it was for him to show on what ground he claimed the right of enhancement, and to adduce proof that he was entitled to receive rent at the rate demanded, failing which he (Mr. Harington) apprehended that the proper duty of the Court was to dismiss the suit as brought. In like manner, if a ryot claimed an abatement of rent, the responsibility of showing what was the proper rent, as well as the grounds on which the claim was based, rested upon him, and if his proofs were considered insufficient, he (Mr. Harington) supposed that his claim would also be dismissed. Furthermore, the proviso contained in the Section seemed to him to destroy, to a great extent, the effect of the rule laid down in the first part of the Section, and to leave it very much to the Collector to determine what rent should be paid in every case, which was what was proposed in the Bill as it now stood. It must be obvious that the special circumstances, which under the proviso were to be taken into account, might embrace all the circumstances mentioned by the Honorable Member of Council, including the vicinity of wild hogs or wild elephants, whose depredations, like many other things, might have the effect of rendering the cultivation of the land more than ordinarily expensive. For these reasons he should oppose the introduction of the Section.

MR. PEACOCK said, he objected to lay down any specific rule for the decision of a matter of fact, like the reasonable value of land at a certain time. But if any rule was to be laid down, was the proposed one correct? The number of years for which the average was to be taken was not stated; this objection might easily be removed, but then there would remain the difficulty of ascertaining the gross produce and average value. And after this had been fixed, would it remain fixed for (say) 12 years? That it would be unfair in parts of the North-Western Provinces for instance, the value, now that large numbers of troops were there assembled, was higher than it would be hereafter. He preferred leaving the whole matter to the decision of a competent Court,

who would pronounce in each case what was reasonable or not.

MR. RICKETTS said, he quite agreed that there might be some difficulties in ascertaining the market value of the average gross produce, but insignificant difficulties compared with ascertainment of description and advantages. He admitted the force of the objection brought forward by his Honorable and learned friend opposite (Mr. Peacock): he should have mentioned for what number of years the average should be calculated; the omission could be easily supplied. Though the Council were against him, he was not convinced that the plan proposed by him (Mr. Ricketts) was not a great improvement. The Honorable Member for Bengal had said that adjacent lands should be assessed at a common rent, but it often happened that lands of the same description, and lying close to each other, paid at different rates. He could recollect a case in which some rice land on a small plain paid three Rupees in the middle of the plain and eight annas only at the edges, the cause being that wild animals injured the crops on the edges, but never got as far as the middle of the plain; they had satisfied themselves or were driven away before they got so far.

With regard to the objection against declaring two-fifths of the ascertained value to be the rental payable, he was under the impression that he had proposed a portion less rather than more than that usually taken when rent was paid in kind. In laying down an arbitrary share which could not in all cases be exactly suitable, he desired to err on the side of the ryot. He left the question to the Council.

The Motion was then put and negatived.

Sections XVIII to XXII were passed as they stood.

Section XXIII provided as follows:—

1. "All suits for the delivery of pottahs or kuboolyuts, or for the determination of the rates of rent at which such pottahs or kuboolyuts are to be delivered;

2. "All suits for damages on account of the illegal exaction of rent, or of any unauthorized cess or impost, or on account of the refusal of receipts for rent paid, or on account of the extortion or rent by confinement or other duress;

3. "All complaints of excessive demand of rent, and all claims to abatement of rent;

4. "All suits for arrears of rent due on account of land either kherajee or lakhiraj, or on account of any rights of pasturage, forest-rights, fisheries, or the like;

5. "All suits to eject any ryot, or to cancel any lease on account of the non-payment of arrears of rent, or on account of a breach of the conditions of any contract by which a ryot may be liable to ejectment, or a lease may be liable to be cancelled;

6. "All suits to recover the occupancy or possession of any land, farm, or tenure, from which a ryot, farmer, or tenant has been illegally ejected by the person entitled to receive rent for the same;

7. "All suits arising out of the exercise of the power of distraint conferred on zemindars and others by Sections CXII and CXIV of this Act, or out of any acts done under color of the exercise of the said power as hereinafter particularly provided.

"Shall be cognizable by the Collectors of land revenue, and shall be instituted and tried under the provisions of this Act, and, except in the way of appeal as provided in this Act, shall not be cognizable in any other Court, or by any other Officer, or in any other manner."

MR. PEACOCK said, he objected to this Section which took away the jurisdiction of the Civil Court. Some of the suits mentioned in it could now be tried by Revenue Officers as summary suits; others could not, but must be tried by the regular Courts. The suits mentioned in Clause 1 were now tried by the regular Courts. The Bill proposed to omit this jurisdiction, and to transfer them to the Revenue Officers for decision.

The suits mentioned in Clause 2 were now tried summarily by the Revenue Courts, but the Civil Courts also had jurisdiction in such cases.

He was not quite sure whether the cases specified in Clause 3 were the subject of summary suits. In the Lower Provinces they appeared to be tried by regular suits, but in the North-Western Provinces he believed it was otherwise. Regulation VII. 1822 was the law in Bengal. That Regulation applied only to the Ceded and Conquered Provinces, but had not been extended to the Lower Provinces.

MR. CURRIE said, that Regulation IX. 1825 extended that law to the Lower Provinces.

MR. PEACOCK said, that Regulation IX. 1825 only empowered the Government to extend that Regulation; but it had not, as he understood, been extended.

Suits of the kind referred to in Clause 4, which might be very complicated, were now to be tried by the Collector. Summary suits for arrears were, by the laws now in force, confined to arrears of current rent. This Clause gave jurisdiction to the Revenue Courts for arrears of rent to any amount.

The suits mentioned in the first part of Clause 5 might now be tried summarily under Regulation VIII. 1819; but "breach of condition" could only be the subject of a regular suit.

MR. HARINGTON referred to "Directions to Revenue Officers," in which suits of ouster from holding for non-payment of rent were mentioned as summary.

MR. PEACOCK.—But were suits for breach of conditions of the same nature?

The suits mentioned in Clause 6 were now the subjects of regular suit—why transfer them to the Collector?

He had shown that some of the suits referred to might now be tried by regular, and others by summary suit. But this Section took away the regular suit, and made all these classes of cases cognizable only by the Collector. This might be unobjectionable (although he did not think it was so) if the jurisdiction was given only to the Collector; but by a subsequent Section (CL) it was provided that—

"All the powers vested in the Collector by the preceding Sections of this Act may be exercised by any Deputy Collector in cases referred to him by a Collector, and in all cases without such reference by any Deputy Collector having local jurisdiction in any Sub-division of a District, &c."

That involved another important question, namely, should the powers given to Collectors be vested in Deputy Collectors having a local jurisdiction? He did not know how many Deputy Collectors had been so invested, but unless they were very numerous, the suitors would have to resort to the distant Court of the Collector instead of the neighboring Moonsiff's Court. But suppose all Deputy Collectors to have this jurisdiction within their Sub-divisions of three or four thannahs. In that case the jurisdiction of the Civil Court would be taken away and transferred to incompetent Judges. He said incompetent, because there was no guarantee for their competency as there was for the competency of Judges of the Civil Courts, who had to undergo an examination. If these gentlemen were to have jurisdiction, and if the Civil Courts should be deprived of it, the people would be compelled to resort to officers for whose competency there was no guarantee. But there was a still stronger objection. These Deputy Collectors would also be Deputy Magistrates. He did not know how it might be hereafter, but now they would have the control of the Police of their Districts. If that duty were taken away, the case would be different; but they could not act efficiently as Judges while they had executive Police functions. If a dacoity or murder was committed, were these Judges to stay and hold their cutcherry instead of looking after the criminals?

The Bill contained a provision for summoning the defendant. The summons was to fix a day "with reference to the state of the file and distance that the defendant may be, or be supposed to be, at the time, from the place where the court is held, &c." If the plaintiff did not attend, or if the defendant did not attend, due provision was made; but there was no provision for the event of the Judge being engaged as Deputy Magistrate in performing other duties. Was the ryot to be dragged up under arrest when no one could tell where the Judge was, perhaps in pursuit of dacoits, or investigating the conduct of a darogah? There should be some guarantee that the Judge was qualified, and his Court should be stationary, so that the people might know where it was held.

Under the proposed plan, if the officer neglected his Deputy Magistrate's duties, he would be subject to the Magistrate's censure; if he neglected his Judge's duties, to the Collector's. Whether it was intended to invite those officers hereafter, he did not know (he was himself opposed to the union); but at present the offices were distinct, so that he would be subject to two masters. It seemed to him that either this new officer's duties as Judge or as Magistrate must be neglected.

When the Bill was read a second time, he had referred to a Petition of the British Indian Association, and had read a

passage therefrom. [See printed proceedings of the Council for 1857, columns 473-4.] He quite agreed with the sentiments expressed by the British Indian Association upon this subject. In performance of his Police duties the officer might excite enmity and distrust, and however pure his intentions, he would not in his judicial capacity have the confidence of the people. It might be said that the Civil Courts could not decide these cases without much delay. It seemed to him that the appeals given by the Bill to the Collector in some cases, to the Judge in others, to the Commissioners in others, rendered it uncertain whether there would be greater expedition in the Revenue Court. Even if these special tribunals were created, the Civil Court's jurisdiction should not be taken away. Have the Moonsiffs not acted impartially in the decisions of such suits?

The object of the Regulation (VIII. 1831) appeared to be to encourage regular suits rather than summary, for it provided—

"With a view to give additional encouragement to parties having claims to arrears of rent to prefer regular suits on account of the same, it is hereby declared that the plaint in all such regular suits, if under the existing Regulations they would have been cognizable as summary suits, may be written on paper bearing a stamp of 1-4th the prescribed value."

It was by the same Regulation declared competent to a Collector to reject a summary suit, and to refer the party to a regular suit; and judicial authorities were authorized to receive such petition as a petition of plaint, in like manner as if the claim had been originally preferred to them in the form of a regular suit. The proper course seemed to him to be that, if the Collector found a suit an intricate and difficult one, such as a suit concerning a right of fishery, he would send the parties to try it by regular suit in the Civil Court. What was the reason alleged for taking away the Civil Courts' jurisdiction? Why should Civil Courts be provided if, for the decision of a large class of suits involving complicated questions, other tribunals were to be created?

MR. CURRIE said, he understood his Honorable and learned friend opposite (Mr. Peacock) to object, *first*, that the Section under consideration took away from the Civil Courts jurisdiction in several classes of cases, and gave it to the Revenue authorities; and, *secondly*, that the Revenue officers by whom this new jurisdiction was to be exercised were officers for whose competency there was no guarantee.

Now, with regard to the first point, he had to observe that Revenue Officers had from the first had more or less cognizance of cases of this description. He would detain the Council for a short time by going over the course of legislation which had been followed on the subject.

Previously to the enactment of the Code of 1793, the trial of suits between landlord and tenant was vested in the Mal Adawlut or Revenue Court. After the constitution of the present Civil Courts, it was provided (by Section 13 Regulation VIII. 1794) that in suits concerning rent or revenue, the Courts should refer cases of disputed accounts to the Collector for report. After a while, in 1795, a summary procedure was provided for the determination of claims to arrears of rent: this was superseded by Regulation VII. 1799, which formed the basis of the present summary suit law, and by it the Judge might "refer the case to the Collector of the District for adjustment and report, as he was authorized to do in all "causes of rent and other matters previously cognizable in the Courts of Mal Adawlut." Then by Regulation V. 1812 a summary procedure was forwarded for cases of replevin. Before, if a ryot were aggrieved by any proceedings of the zemindar in distraint for rent, his remedy was by instituting a regular suit. *All* these cases were ordered to be referred to the Collector for report. Next, by Regulation XIV. 1824 Revenue officers were invested with the power of trying and determining by a summary process, and subject to a regular suit in the Civil Court, all suits, claims, and demands of rent, arrears or exactions of rent, between landholders or farmers and their under-tenants, or between any other persons concerned in the receipt and payment of land rents, which were referred to them for the purpose by the Judges of the Zillah and City Courts. And, lastly, a few years afterwards, by Regulation VIII. 1831 the reception of

plaints by the Judge was discontinued, and the whole cognizance of summary suits relating to demands or exactions of rent was given to the Collector.

It was very true that, as stated by the Honorable and learned Member (Mr. Peacock), there was mention made in the Regulations of encouragement being given to the institution of regular suits in these cases. But he would remark that, when a regular suit was instituted in a case of this kind, the Court had the power to refer it to the Collector for adjustment and report, and he believed that by an order of the Government North-Western Provinces all such suits were as a rule referred to the Collector for report. Well then, if when the procedure was summary the suit was to be received and tried by the Collector, and if the Collector was to have the power of making the primary investigation in the case of regular suits, was it not far better that the disposal of these cases should be made over to the Collector altogether? This was the course proposed in the Bill, and in order to its being carried out effectively, rules of procedure were laid down for the guidance of Collectors very similar to those prescribed by the new Code of Civil Procedure. The jurisdiction of the Civil Courts was not abolished, for in all suits, except small money cases, an appeal lay from the Collector to the Zillah Judge. It appeared to him that this was a very great improvement on the present system. The idea was taken from the Chapter on Revenue Suits in Messrs. Mills' and Harington's Code; and the practice was the same in the Madras and Bombay Presidencies. In Madras the Revenue Officers had the power of trying all rent suits, and from their decisions there was an appeal to the Zillah Court. In Bombay, also, the Collector had cognizance summarily of all such suits, and from his decision there was an appeal only to the Sudder Court.

With regard to what had been said on the subject of appeals, it appeared to him that the Honorable and learned Member opposite (Mr. Peacock) had not well got up this part of the Bill. The plan of the Bill was to give the original jurisdiction to the Collector and his Deputies, with an appeal to the Zillah Court in all cases except claims to money within a certain amount, when such claims were tried by the Collector.

It was thought well not to give the same finality to the decisions of Deputy Collectors, and therefore it was provided that when cases, in which if tried by the Collector the decision of the Collector was final, were tried by a Deputy Collector, an appeal from his decision should lie to the Collector. In all other cases, whether tried by the Collector or by a Deputy Collector, there was an appeal to the Zillah Court.

The scheme was simple enough. The Bill gave the Commissioners a general control over the Collectors and Deputy Collectors; but there was an express provision restricting them from interference with the orders of Collectors and Deputy Collectors, relating to the trial of suits or the execution of decrees.

He had explained the present state of the law and the change made by the Bill. He did not know what was to be the practical effect of the Honorable and learned Member's objections, or what substitute he proposed for the scheme of the Bill. But if it went the length of withdrawing from the Revenue Officers the jurisdiction which they now exercised, the change would be so pernicious, especially with regard to the North-Western Provinces, that sooner than consent to it he would rather abandon the Bill altogether.

With regard to the second point, namely, the agency by which the Bill was to be worked, it had been asked, who were the Deputy Collectors that would be entrusted with the determination of these suits? He answered that, in the first place, there were a number of old Deputy Collectors, some seventy perhaps, who had for years past been exercising the summary jurisdiction which the law gave to the Revenue Officers. There were also Deputy Magistrates of Subdivisions who were for the most part gentlemen of general intelligence, and who, in the discharge of their duty as Magistrates, must have acquired some knowledge of the habits of the people and the condition of the rural population. For the last two years at least these officers had been also Deputy Collectors, and engaged in the trial of summary suits. Therefore, as regarded them, there could

be no objection on the score of inexperience.

Then there were other Deputy Magistrates newly appointed to complete the proposed number of Sub-divisions, whom the Honorable and learned Member had pronounced to be manifestly incompetent. He (Mr. Currie) did not know what grounds he had for saying so. He was informed that these officers, whether Europeans or Natives, were carefully selected, that they went through a course of instruction and training at the Sadder Station of the district, and were required to pass an examination, and that no newly appointed Deputy Magistrate was appointed to a Sub-division, until, in the judgment of the Commissioner, he was considered fit for the charge. He believed that this was sufficient, and he was of opinion that the necessary approval of the Commissioner was a surer guarantee of competency than the examination passed by Moonsiffs. The Honorable and learned Member had spoken of their having a guarantee of the competency of the Moonsiffs, but none for that of the Deputy Collectors. But the law did not require that Moonsiffs should pass an examination any more than Deputy Collectors. The Executive Government had indeed prescribed an examination for Moonsiffs, but it had also required that Deputy Collectors should pass an examination; and it appeared to him that in that respect there was no greater guarantee for competency in the one case than there was in the other.

Then the Honorable and learned Member objected to these officers having jurisdiction under the Bill, because they were invested with Police functions, and obliged to be continually moving about their districts in the discharge of those functions. Now when Sub-divisions were constituted, they were generally of very small extent, probably not exceeding three thannahs. If that were so, there could be no necessity for the officer to be ever absent for any length of time from his station. If a dacoity or affray, or other serious offence, occurred, he could go and return before evening; at any rate his absence need never exceed twenty-four hours. It might of course happen that a Deputy Collector and Deputy Magistrate might be engaged in some other duty at the time fixed for the trial of a suit. But it might also happen that a Civil Court might in like manner be engaged upon another case, or the Judge might have a severe bilious headache, and be unable to attend his Court. For all practical purposes the Court of the Deputy Magistrate and Deputy Collector would be a stationary Court as much as that of any Civil Judge.

It had been said, if you have a local Civil Court, why not make use of it? Why exclude any class of cases from its cognizance? He (Mr. Currie) was not one who thought that instances of corruption were common in the Moonsiffs' Courts; he believed that cases of downright venality were extremely rare: but he also thought that the present Moonsiffs were taken from a class little qualified to resist the influence of wealth and power. Take the case of a young man appointed a Moonsiff, and placed in the midst of the estate of a powerful and wealthy Zemindar; then considering the class from which these young men were taken, and the manifold means of annoyance possessed by the Zemindar, could they confidently rely upon his not being influenced by the circumstances in which he found himself placed? This would ordinarily not apply to Deputy Collectors, many of whom were Europeans, who, when Natives, were appointed from a class of men of higher social standing, and who were considerably better paid.

There was another reason against making over the trial of these suits to the Moonsiffs, a reason connected with the measures in contemplation for the improvement of the constitution of the Courts. It was thought that the establishment of the proposed Small Cause Courts might lead to the gradual reduction, and, perhaps, the eventual abolition of the Moonsiffs' Courts, which were generally considered the weakest point in our judicial system. But if the Moonsiffs were to have the trial of all these cases, it would be impossible to reduce their number, and the reform contemplated in that respect would be unattainable.

He had spoken particularly with reference to the Lower Provinces. As regarded the North-Western Provinces, the case was much stronger. There the Revenue Officers were brought into

immediate communication with the landed proprietors and the cultivating classes, and with regard to those Provinces, at least, there could not be the slightest doubt that all disputes between landlord and tenant would be best decided by the Revenue Officers.

He would not detain the Council longer than would suffice to point out the practical effect of the proposed change with respect to the several classes of suits enumerated in Section XXIII

With regard to Clause 1 (suits for pottahs and kuboolyuts, and for determining rates of rent), his Honorable and learned friend had properly observed, that according to the existing law these suits were cognizable only by the Civil Courts. And the same was the case with the suits referred to in Clause 2 (suits for damages on account of exaction or extortion of rent, &c.) In both these classes of cases the law of 1793 had endeavored to provide redress for the ryot for wrongs sustained at the hands of the landholder; but the remedy was altogether ineffective, because in a regular suit in the Civil Court, with its expenses and delay, the ryot could have no chance with the landholder. But if he were allowed to go to the Collector or Deputy Collector, with whom he was brought into frequent communication, the case would be different. Practically this took nothing away from the Civil Courts, because no suits of the kind were ever instituted in them; but he hoped that it would give a real jurisdiction to the Collector.

Then as to Clause 3 (complaints of excessive demand of rent and claims to abatement), there was no provision in the present law for redress in such cases. If any such complaint or claims were preferred, it could be only by suit in the Civil Court; but in practice, he believed, such suits were unknown.

As to Clause 4 (suits for arrears of rent), at present the Collector had jurisdiction in respect of recent arrears only, and the Civil Courts in respect of arrears of longer standing. But why should there be one tribunal for arrears of this year, and another for arrears of the past year?

Suits, under Clause 5 (for ejectment and cancelment of lease), might certainly be brought in the Civil Courts. But under the existing law, when in a suit before the Collector an arrear was adjudged to be due by a ryot at the end of the year, or by a farmer, the ryot might be ejected, or the lease might be cancelled without the necessity for further proceeding.

Clause 6 (suits for the recovery of occupancy). In these cases also suit might be brought in the Civil Courts. But according to a Construction of the Sudder Court, a ryot illegally ejected might recover possession by application to the Collector. The Clause merely gave a formal sanction to, and provided means for, the formal exercise of a power already vested in the Collector.

In respect of suits under Clause 7 (suits arising out of the exercise by landholders of the power of distraint), the Collector had already complete jurisdiction.

He would only observe, in conclusion, that the only reason which he had ever heard for giving the trial of rent suits to the Moonsiffs rather than to the Collectors, was the hardship of obliging suitors to attend at the Sudder Stations, and this would be completely obviated by the plan of placing Deputy Collectors in charge of Sub-divisions.

MR. GRANT said, there were two large points in this important matter, touching which he should feel much obliged if the Honorable Member for Bengal would favor him with his reasons. First, on what grounds did he support his proposal for taking away from the Civil Courts all jurisdiction, even a co-ordinate jurisdiction, in these cases? If a man did not choose to take advantage of the summary or exceptional jurisdiction provided for him, he might well be allowed to take his case, if he pleased, to a regular Court. Many reasons might induce him to prefer doing so, particularly when in the Revenue Court his case might be decided by the very Officer with whom he might be thrown in conflict every week in the year. He might well say he would rather wait for a more tardy decision than have his case decided by the local thief-catcher, for that was the name by which he might call the official in question, though the Honorable Member would give him a different name. Why should the party be wholly debarred, in such cases, from the ordi-

nary Courts? If in all other cases he was to go there, why might he not, if he pleased, go there in these cases also? He wished to hear the reasons. The law he believed might be found to work well if a co-ordinate jurisdiction was created. Such jurisdictions usually worked well; a sort of rivalry was created, and each Court endeavored to make itself as useful as it could. Instead of friction and inconvenience, that was the general result. This co-ordinate jurisdiction was the present system too; and he wished to know on what grounds the Honorable Member proposed to alter it.

The second question was this: was the Honorable Member quite sure that, worded as the Bill now was, it would apply only to those classes of cases to which he (Mr. Grant) presumed it was the Honorable Members' design to restrict it? He (Mr. Grant) felt uncertain as to this. He had not had time to study the Bill with that attention which it so thoroughly deserved; but it appeared to him that many cases might be brought within its scope, which might not be within the Honorable framer's intention. A person who erected a house, or a manufactory, first obtained a pottah for the land from the zemindar; he was only a pottahdar, though he might expend many lakhs of rupees upon it. If he quarrelled with his zemindar about his holding, was his case to be tried by the Deputy Collector? Or suppose a case of ejectment concerning a large Indigo Factory, or a Silk Filature Establishment—most valuable property might be held under a pottah—why throw such cases into these Courts? Was this intended? If so, he wished to know on what grounds?

If this Bill were to be restricted only to cases where true rent was in question, that is, the money paid by the actual cultivator of the soil, such doubts as he (Mr. Grant) felt upon the Bill would be dissipated. But it seemed to him that very different and very much larger cases were unnecessarily included within it. Under the terms of Clause 6 all tenures of every description seemed to be included. A case between the Rajah of Burdwan and a putneedar might therefore be tried in the Revenue Courts. Was this intended? If not, why not make it plain that such cases were not within this law?

MR. CURRIE, in answer to the Chairman's first question, said that the reason for not, continuing the jurisdiction of the regular Courts was one to which he had already referred. He had stated that the law had intended to give protection to the cultivating classes, but it had failed in its object, because the remedy provided was by suit in the regular Courts; and it was to give those classes greater facilities, and because the present law had been found inoperative, that the present scheme was proposed. He saw no reason why a zemindar should have the right of taking a ryot to a Moonsiff's Court. If they could establish a more independent Court, why should not all go there?

In reply to the second question, he said that the present law applied to all cases connected with the payment of rent by whatsoever class of persons it might be payable. The Bill did not meddle with any questions of right between parties possessing or claiming co-ordinate interests, but it took cognizance of all cases arising between landlord and tenant. If an Indigo Planter took land of a zemindar, and did not pay the stipulated rent, he might be sued under this Bill. He (Mr. Currie) saw no reason for restricting its operation to the case of actual cultivators, and such restriction would entirely change its character. With regard to putnee tenures, there was a special law. If a putneedar of Burdwan did not pay his rent, the Rajah would proceed against him according to Regulation VIII. 1819; then if the putneedar objected to the proceedings, and wished to set aside the sale, he must bring his suit in the Civil Court: in such a case the Collector would have no jurisdiction.

MR. GRANT said, I understand the Honorable Member to say that, if a dispute arises respecting rent between a zemindar and his putneedar, if the zemindar claims two hundred Rupees as rent, and the putneedar admits only one hundred Rupees, after the passing of this Bill, the dispute will still be determined by the Civil Court.

MR. CURRIE. Yes, if the tenure has been sold for the claim of the zemindar.

MR. GRANT. Then why not allow the same remedy in other cases of dispute between the zemindar and under-tenant?

MR. CURRIE had already said, that all cases of dispute concerning rent were intended to be tried by the Revenue Officers. The case of the putneedar, however, was exceptional. Before the sale of any other tenure could take place, the existence of any arrear must be proved and a decree obtained, and, according to the provisions of this Bill, the case would be tried before the Collector. For the case of the putneedar there was a special law. If the zemindar had a claim against the putneedar at the time of the half-yearly sales, he could apply to the Collector, who would order the tenure to be sold at once on the responsibility of the zemindar. If the putneedar contested the justice of the sale, he must do so by suit in the Civil Court. He (Mr. Currie) did not see any necessity for giving jurisdiction to the Collector in such cases.

MR. HARINGTON said, he thought it was to be regretted that this discussion had not taken place on the Motion for the second reading of the Bill instead of at the present stage, and that Honorable Members who were opposed to the principle involved in the Section under consideration, which proposed absolutely to invest the whole of the Collectors and Deputy Collectors in the Presidency of Bengal, as well in the Lower as in the Upper Provinces, with the primary jurisdiction in all suits or cases of the nature of those described in the Bill, had not stated their objections on the Motion for the second reading, and had not at that time gone to a vote upon the question as to whether the Bill with this Section in it should be allowed to be read a second time. He thought that if the majority of the Council were opposed to giving to the Revenue authorities the absolute jurisdiction which it was intended that they should exercise, it would have been better to have thrown out the Bill on that ground on the Motion for the second reading. The Honorable Member for Bengal would then have considered whether it would be right for him to bring in a new Bill which would not be open to the same objection. He was aware that the Honorable and learned Member of Council on his left (Mr. Peacock) had objected to the Section on the Motion for the second reading of the Bill, but still he had allowed the Bill to be read a second time, though he had no doubt reserved to himself the right of refusing his assent to the Section in question at any future stage of the Bill. Now it certainly appeared to him (Mr. Harington) that there was very great inconvenience in allowing a Bill, containing important principles upon which much difference of opinion existed, to be read a second time, and after the Bill had been published for general information, had been carefully considered by the Select Committee appointed to report upon it, and had been recommended by them to be passed, in throwing it out either when referred to a Committee of the whole Council, or on the Motion for the third reading, because of the objections entertained by a majority of the Council to the principles on which the Bill was based, or to some one or more of them. Such a mode of dealing with a Bill, to say the least of it, certainly involved the loss of much valuable time and labor.

With regard to the objections taken by the Honorable and learned Member of Council on his left (Mr. Peacock) to the proposed transfer of jurisdiction to the Revenue authorities, they appeared to him (Mr. Harington) to have been so fully answered by the Honorable Member for Bengal, that he felt that, if he entered into any detailed observations with a view to meet those objections, he could only travel over the same ground which the Honorable Member for Bengal had already gone over; he could only repeat what had already been said by that Honorable Member. He would not thus unnecessarily occupy the time of the Committee, but he must be allowed to express his hearty and entire concurrence in all that had fallen from the Honorable Member for Bengal, to which he would add his testimony as to the advantages which might be expected to result from the Bill becoming law in the form in which the Select Committee had recommended that it should be passed, and as to the very great disappointment which would be generally felt, as well by the officers of Government as by the people at large, parti-

cularly in the North-Western Provinces, should the adoption of the objections taken by the Honorable and learned Member of Council on his left (Mr. Peacock) to the Section, as now framed, lead the Honorable Member for Bengal to abandon the Bill altogether. He certainly thought that, if the Honorable and learned Member of Council succeeded in his object, the Honorable Member for Bengal could scarcely be expected to proceed with the Bill shorn of what he (Mr. Harington) must regard as one of its most useful provisions, and nothing, therefore, would remain for him but to withdraw the Bill, leaving any Honorable Member who might think proper to bring in a new Bill. But after the failure of the Honorable Member for Bengal to pass the present Bill, what Honorable Member, he would ask, would undertake the task of bringing in a new Bill, even though he would have the full benefit of the labors of the Honorable Member for Bengal on the Bill before the Council? He need not tell them that the Honorable Member for Bengal would not be able to bring in a new Bill, for they all knew that in a few days the Council would be deprived of his valuable services. He felt sure that no one who heard him would consider him to be guilty of flattery when he said that, however desirable the departure of the Honorable Member for Bengal might be on account of his own health, and they must all regret that the state of the Honorable Member's health obliged him to leave India before he had completed his full term of Council, his loss would be severely felt here. He had had the good fortune to be associated with the Honorable Member for Bengal on most of the Select Committees appointed to consider and report upon the many important Bills which had occupied the attention of the Council during the last eighteen months, and he could bear witness to his unwearied labors and to the earnest desire at all times evinced by him to promote, to the utmost of his power and ability, the welfare of the natives of India, and of all others falling within reach of the measures of this Legislature. He believed he might say that some of the most important Bills passed by the Council during the five years of its existence had either emanated from the Honorable Member for Bengal, or owed much that was valuable in them to his judicious suggestions as they passed through their several stages; but however valuable those Bills might be, he thought it would be admitted that the Bill before the Council would lose nothing from a comparison with the best of them. By common consent this Bill, if not the most important that had ever been introduced into this Council, ranked second in importance to none. On the preparation of this Bill the Honorable Member for Bengal had bestowed particular attention and a large portion of time. He had brought to bear upon it the experience of a long, useful, and highly honorable career; he had also brought to bear upon it the largest feelings of benevolence towards those numerous classes who were the least able to defend themselves against the more influential members of the native community, and he (Mr. Harington) felt certain that this Bill would materially contribute to the comfort and happiness of those classes. It essentially sought the greatest happiness of the greatest number. Such then being the character of the Bill, he trusted that the Honorable Member for Bengal would have the great gratification, before he left them, of seeing the Bill pass into law by being present when His Excellency the Right Honorable the Governor-General gave his assent to it. He hoped that this reward, at least, awaited the arduous labors of the Honorable Member. Not that he cared for any such recompense; throughout he had looked simply to the advantages which he knew from his own experience would flow from the passing of this Bill to thousands, indeed, he might say millions; and he (Mr. Harington) trusted that, when the Honorable Member said farewell to the shores of India for ever, he would be followed by the grateful acknowledgments of these thousands, of these millions, not simply because he had brought in this Bill for their benefit, but because he had been the means of giving them so excellent and so valuable a law.

He did not know whether he could lay claim to having been one of the originators of the scheme now objected to by the Honorable and learned Member of Council on his left; but as noticed by

the Honorable Member for Bengal, he believed that it had been first proposed for adoption by Mr. Mills and himself. When engaged in drawing up a Code of Civil Procedure for the use of the Civil Courts in this country, to which he was ashamed to allude so often, he and Mr. Mills had carefully considered the subject of constituting the Collectors and Deputy Collectors employed in the three Presidencies Courts of first instance for the trial and determination of what might be called purely revenue suits, and the result was the introduction into the Code prepared by them of the Chapter which treated of the Civil jurisdiction of officers in the Revenue Department. Their reasons for the decision to which they had come had been read to the Council by the Honorable Member for Bengal at the time he introduced the present Bill, and it was unnecessary for him to repeat them. It seemed to be supposed by some that they were about to give an entirely new jurisdiction to the Revenue Authorities, but such was not the case. If Honorable Members would refer to Section 20 Regulation VII. 1822, they would see over what a large variety of cases the Revenue Officers of Bengal might already exercise a summary jurisdiction, and that, as respected the character of the suits cognizable by those officers, the Section under consideration really did not go beyond the present law. Every Collector in the North-Western Provinces had been invested for many years past with authority to try and determine, in the first instance, all the descriptions of cases mentioned in the Section of the Regulation just quoted, and he had never heard any complaint made of the manner in which they had exercised that authority. The framers of Regulation VII. 1822 must, it was to be presumed, have had good and sufficient reasons for passing that law, and for allowing the Revenue Officers to exercise the large powers with which they might be invested under its provisions; and the same reasons, for any thing he knew to the contrary, still existed for at least continuing to those officers the powers which could now be entrusted to them, and with which throughout the North-Western Provinces, as he had already stated, and he believed in many parts of Bengal also, they were invested at the present time. The effect, however, of modifying the Section under consideration, so as to meet the objections of the Honorable and learned Member of Council on his left, would be to deprive the Collectors and Deputy Collectors throughout the Presidency of Bengal of the powers which they were now competent to exercise, since they had already passed Section I of the Bill, which repealed all the existing summary suit laws He did not know whether the Honorable and learned Member of Council proposed to go back to the first Section of the Bill in the event of the Committee adopting his views in respect to the question before them, and to move the rescission of that Section. No doubt under the law, as it now stood, every decision passed by a Revenue Officer in any of the cases mentioned in Section 20 Regulation VII. 1822 might be contested by a suit in the Civil Courts, but if no such suit was brought, the decision of the Revenue Court had all the force of a decree of a Civil Court If, however, the decision was contested, there was first the regular suit, then there might be a regular appeal, and this might be followed by a special appeal to the Sudder Court, so that cases of this description, which, for the most part, were for a very trifling sum, were subject to a larger amount of litigation than any other class of civil actions. The Section under discussion was intended to remedy this state of things, and to get rid of at least one stage of the litigation to which the various classes of cases referred to were subject under the existing law. He thought that it would be very generally admitted that for the right decision of Revenue suits in this country peculiar knowledge was required, and that the officers appointed to decide such suits should have some practical acquaintance with the numerous tenures existing on this side of India and with the working of the Revenue laws.

Now this knowledge the Moonsiffs generally did not possess, certainly not on their first appointment. At their examination they might have answered correctly two or three Revenue questions, taken perhaps from the work which had been prepared by the Honorable Member of Council opposite (Mr. Ricketts), but more than this was re-

quired. The officers who would be employed to try cases under the Bill, being brought up in the Revenue Department, would be better qualified to deal with such cases than Judges who had no Revenue experience. He believed it was generally found to be the case that the best Collectors from their knowledge of Revenue matters made the best Civil Judges.

The Honorable Chairman had asked what objection there was to co-ordinate Courts. His objection to Courts exercising co-ordinate jurisdiction was that they gave an advantage to the plaintiff which did not extend to the defendant. The plaintiff could elect in which of the co-ordinate Courts he would bring his action, but the defendant had no power to demur to the suit being heard in the Court selected by the plaintiff. He (Mr. Harington) did not think that this was right. The defendant should have the same power in respect to the choice of the Court by which the suit brought against him should be heard as was enjoyed by the plaintiff. The law, as it now stood, was a partial or one-sided law. There might be an advantage in having different Courts to try different classes of suits; but financial and other considerations rendered this impossible. All that could be done was to assign to the existing tribunals those duties which they were best qualified to discharge, and he believed it would be found that the Deputy Collectors who would be employed to decide cases under the Bill, and who were much better paid than the Moonsiffs, would dispose of such cases much more satisfactorily than the present class of Uncovenanted Judges, particularly those of the lowest grade. He had only one more remark to make. He did not think it was fair to call the Courts proposed to be constituted under the Bill Deputy Magistrate's Courts. It was as Revenue Officers or as Deputy Collectors, and not in their capacity of Criminal Judges, that they would act in adjudicating the cases which would come before them. They might with equal justice call the Courts of the Principal Sudder Ameens, Sudder Ameens, and Moonsiffs of the first grade, all of whom were invested with criminal jurisdiction, Deputy Magistrate's Courts in speaking of them in their capacity of Civil Judges.

MR. RICKETTS said, he hoped that the Council would not run away with the idea that they were about to try some great experiment. Such was not the case. Although it was proposed to give additional jurisdiction to Revenue Officers, they were only improving the road over which they had been long travelling. The Civil Courts had been tried and found wanting.

So long ago as 1795 it was declared that—

> "Government not admitting of any delay in the payment of the public revenue receivable from proprietors and farmers of land, justice requires that they should have the means of levying their rents and revenues with equal punctuality, and that the persons by whom they may be payable, whether under-farmers, dependent talookdars, ryots, or others, should be enabled, in like manner, to realize the rents and revenues from which their engagements with the proprietors or farmers are to be made good. Increased punctuality on the part of landholders in the discharge of their dues was now expected, and justice required that they should have the means of obtaining the rents due to them even more now than in 1795."

The Honorable Member for Bengal had correctly described the steps by which Revenue and rent cases were in the first place instituted in the Civil Courts and disposed of by those Courts, then sent for report to Collectors, and ultimately, in 1831, made cognizable by the Revenue Courts. The first object in giving the trial of these summary suits to Revenue Officers was punctuality. It was well known to all that, in spite of great efforts, there were heavy arrears of business in the Civil Courts, while he found it stated in the Report of the Board of Revenue for 1857-58, that during that year 56,735 summary suits were instituted; and how many out of that large number did the Council think had been pending more than six months at the end of the year? In the whole of Bengal, only fifty-two! If a similar enquiry were made as to the Civil Courts, the result, he apprehended, would be very different. He had no doubt that, if these Revenue cases were transferred to the Civil Courts, they would be disposed of after much greater delay. In the Report of the Board of Revenue, to which he had just

referred, he found further that out of upwards of 25,000 applications for execution of decrees received by the Revenue Courts, there were only twenty pending at the end of the year, which were above six months old.

He hoped that, however they might object to one description of suits being transferred to the Revenue Courts, they would not reject the whole Bill. The Bill smoothed all that he had found rough during the long years he was a Revenue Officer. All that was difficult would now be easy, all that was intricate would now be plain; young Revenue Officers, instead of having to search through many volumes and the enactments of many years, would find all the rules for guidance in the few pages he held in his hand. Pray don't reject this Bill. If there were some suits which it was considered advisable to leave in the hands of the Civil Courts, the Council might take up the Section, Clause by Clause, and provide for maintaining the jurisdiction of the Civil Court over such cases as they were unwilling to transfer. It was true that the present Officers had various powers and functions. But surely that was a bad reason for rejecting a good law. If the law is a good law, don't think of the machinery by which it is to be carried out, and which may and probably will be altered. It really appeared to him that it would be as reasonable to reject and refuse to use an improved engine because for a time the engineer, hands being short, had also to perform the duties of stoker.

SIR CHARLES JACKSON said, it was with the utmost diffidence that he expressed any opinion on the subject of this Bill. But the Bill proposed to remove certain suits from the jurisdiction of the Civil Courts, and to confer jurisdiction in respect of those suits on the Revenue Officers; that was to say, it proposed to transfer the adjudication of these cases from Courts which had been accustomed to Courts not so accustomed to deal with them. Now it seemed to him that the onus of proof lay on the party proposing the transfer, for he thought that *primâ facie* all cases should be tried by the Civil Courts. The onus of proof rested with the proposers of the present measure, who were bound to show on what grounds the Civil Courts were unfitted to deal with these cases. The statements made in support of the change were, first, that the Collectors and Deputy Collectors would make as good Judges as the Moonsiffs. Even if that were the fact—and he (Sir Charles Jackson) should require a little more than mere assertion before he gave his adhesion to such a statement—he considered it to be most disgraceful that Moonsiffs who were accustomed to perform judicial duties were pronounced to be inferior to those on whom no such duties devolved. Then it was said that Collectors made the best Judges, but he must beg leave to doubt that statement also, but must presume that the ordinary Judges of the country were more likely to have some general idea of the principles of law, and be better able to decide the case than those who were not accustomed to such work. As he had said, the onus of proof lay on the proposers of this Bill, and that such proof had not been given.

MR. PEACOCK said, no one concurred more cordially than he did in all that had fallen from the Honorable Member for the North-Western Provinces regarding the ability and valuable public services of the Honorable Member for Bengal. No one would regret more deeply than himself the retirement of the Honorable Member from this Council. But he could not conscientiously take away the jurisdiction of the Civil Courts and give jurisdiction to persons who might not be qualified. He did not know how many Deputy Magistrates were to be appointed Deputy Collectors of Sub-divisions; and why the Council should be thus called upon to legislate in the dark, and to transfer jurisdiction from the Civil Courts to persons of whose qualifications they were quite ignorant.

The Honorable Member opposite (Mr. Ricketts) had said that they had been travelling this road for the last twenty eight years. But hitherto Deputy Magistrates with Police functions had not been invested with the jurisdiction now proposed to be conferred. The Lieutenant-Governor, in his reply to the British India Association, spoke of the measure investing Deputy Magistrates with the power of Deputy Collectors, with authority to adjudicate summary suits for the recovery of rents, &c., as an experiment.

He wished to know the result of that experiment. The Bill adopted the vicious principle of former laws, namely, that the zemindar must necessarily have the same powers for collecting from his ryot as the State had for the collection of its land revenue. They were now asked to transfer jurisdiction without being informed of the result of the experiment. The Court of Directors in 1856 said :—

"To remedy the evils of the existing system, the first step to be taken is, wherever the union at present exists, to separate the police from the administration of the land revenue. No Native Officer should be trusted with double functions in this respect. We do not see the same objection to the combination of magisterial and fiscal functions in the hands of our European officers, because we can better hope they will not abuse their powers, and because, by employing the Collector as the principal Magistrate of each district, we are able to obtain for the chief administration of the penal laws a more efficient, and especially a more experienced, class of Officers than would otherwise be available. This is an important consideration which ought never to be lost sight of. Nevertheless, it is still more important that the Officers who control the police should be required to undertake frequent tours of their districts. And they must not be so burdened with other duties, such as the preparation of forms, returns, and statements, as to be deprived of the time sufficient for this essential purpose. This supervision, exercised by intelligent Officers, who are accessible at all times, is the most certain and effectual check to every abuse of authority by subordinate servants of police."

If this were so, they ought not to take away jurisdiction from the Civil Courts, and keep the Deputy Magistrates from their proper duties. He would ask the Honorable Member for Bengal, how many Deputy Magistrates were to be appointed in Bengal? What would be the extent of their Sub-divisions? Were they to be stationary or to travel about looking after the Police? His objection was not to giving jurisdiction to these Officers as Deputy Collectors, but as Deputy Magistrates having Executive Police functions. If the office of Deputy Magistrate should be separated from that of Deputy Collector, his objection would be removed. If as Deputy Collector the Deputy Magistrate would be called upon to dispose of upwards of 56,000 suits, as had been said, how could he look after his Police duties? For these reasons, though the Bill contained much of what he approved, he must oppose this Section.

MR. CURRIE said, he was sorry that he should be obliged to occupy the time of the Council again. But the Honorable and learned Member who had just spoken had quoted a letter of the Lieutenant-Governor of Bengal, written, he believed, in 1857, and had asked him some questions in reference to it. The Honorable and learned Member wished to know the result of the experiment of employing Deputy Magistrates to decide summary suits. How many Deputy Magistrates were to be appointed, and what was to be the extent of their Sub-divisions? That the result of the experiment had been satisfactory, was to be inferred from the wish of the Lieutenant-Governor to continue and extend the system, and the best reply he could make to the other question would be to read an extract from the Minute of the Lieutenant-Governor on the subject of the Bill, dated 27th of last November. The Lieutenant Governor said :—

"Nothing which is stated by any of the authorities who have reported on this Bill has altered my opinion in favor of constituting the new Courts in the hands of Collectors and Deputy Collectors, instead of Moonsiffs. Deputy Collectors, very carefully chosen, will shortly be stationed over every district in the proportion of one to every three Thannahs; and in the first instance, at all events, it will only be by putting the new jurisdiction into the hands of these Officers, that the essential protection and security of the ryot will be provided for. Hereafter it may be possible to use the Moonsiffs in this way, but not now. And to employ the Moonsiffs in administering the new law at first will be to risk all its proposed advantages."

That was the opinion of the Lieutenant-Governor. If a Deputy Magistrate were appointed for the purpose only of superintending the Police and trying offences in three Thannahs, his time would be insufficiently occupied. He (Mr. Currie) had no doubt that without any hindrance to his other duties he could perform the functions of Deputy Collector, and exercise the jurisdiction proposed to be entrusted to him by the provisions of this Bill.

MR. HARINGTON said, the Honorable and learned Judge opposite (Sir C. Jackson) had called on the promoters of the Bill to adduce proof that the proposed transfer of jurisdiction from the Civil Courts to the Revenue Authorities was necessary or desirable. The

burden of proving that such was the case rested, he maintained, on the Honorable Member by whom the Bill was introduced, and without such proof he did not think the Committee should be called upon to give their sanction to the proposed transfer. The Honorable and learned Judge would probably be willing to accept the evidence of those who would be chiefly affected by the Bill on this point. Under the existing law, suits relating to arrears or exactions of rent might be brought at the option of the plaintiff, either regularly in the Civil Courts, or summarily before the Revenue Authorities; but in order to give additional encouragement to the institution of such suits in the Civil Courts, the law provided that, when instituted in those Courts, they might be brought on a stamp of one-fourth of the value prescribed for plaints in regular suits. This no doubt was a great encouragement, but what had been the effect of it? From a statement which he held in his hand, he found that in one year rather more than 19,000 suits had been instituted in the Civil Courts of the Lower Provinces of Bengal for land or land rent, and upwards of 56,000 summary suits before the Revenue Officers. The statement did not show how many of the suits instituted in the Civil Courts were for land and how many related to land rent, but taking the latter at 12,000, or rather less than two-thirds, which was probably below the mark, it appeared that about five times as many suits relating to arrears or exactions of rent were instituted before the Revenue Authorities as in the Civil Courts. There could be no doubt, therefore, as to the tribunal to which the people gave the preference, and that too notwithstanding the encouragement held out to them to resort to the Civil Courts in the remission of stamp duty.

Clause 1 being put, the Council divided as follows :—

Ayes 7.	*Noes* 2.
Mr. Forbes.	Sir Charles Jackson.
Mr. Harington.	Mr. Peacock.
Mr. Currie.	
Mr. LeGeyt.	
Mr. Ricketts.	
Sir James Outram.	
The Chairman.	

The Clause was carried.

Mr. Harington

Clause 2 being put, the Council divided as above, and so the Clause was carried.

Clause 3 was carried without a division.

Clause 4 being proposed, Mr. Grant moved to omit the following words at the end of the Clause, as involving questions likely to lead to great difficulties:—

"or on account of any rights of pasturage, forest-rights, fisheries, and the like."

After some conversation, the question was put and negatived.

The Clause being then put, the Council divided as follows :—

Ayes 6.	*Noes* 3.
Mr. Forbes.	Sir Charles Jackson.
Mr. Harington.	Mr. Peacock.
Mr. Currie.	The Chairman.
Mr. LeGeyt.	
Mr. Ricketts.	
Sir James Outram.	

The Clause was carried.

Clause 5 being put, the Council divided as follows :—

Ayes 7.	*Noes* 2.
Mr. Forbes.	Sir Charles Jackson.
Mr. Harington.	Mr. Peacock.
Mr. Currie.	
Mr. LeGeyt.	
Mr. Ricketts.	
Sir James Outram.	
The Chairman.	

The Clause was carried.

Clause 6 being proposed, Mr. Grant proposed to omit the words "farm or tenure" in line 2.

The Motion was negatived.

The Clause being then put, the Council divided :—

Ayes 7.	*Noes* 2.
Mr. Forbes.	Sir Charles Jackson.
Mr. Harington.	Mr. Peacock.
Mr. Currie.	
Mr. LeGeyt.	
Mr. Ricketts.	
Sir James Outram.	
The Chairman.	

The Clause was agreed to.

Clause 7 being proposed, Mr. Peacock proposed to substitute the word "may" for the word "shall" in line 8.

The question being put, the Council divided:—

Ayes 5.	*Noes* 4.
Sir Charles Jackson.	Mr. Forbes.
Mr. LeGeyt.	Mr. Harington.
Mr. Peacock.	Mr. Currie.
Sir James Outram.	Mr. Ricketts.
The Chairman.	

So the Motion was carried.

MR. PEACOCK then moved the omission of the following words at the end of the Clause:—

"and, except in the way of appeal as provided in this Act, shall not be cognizable in any other Court, or by any other Officer, or in any other manner."

The question being put, the Council divided as above.

So the Motion was carried, and the Clause as amended then passed.

Sections XXIV to XXXVI were passed as they stood.

Section XXXVII provided as follows:—

"In suits for the recovery of arrears of rent or of money in the hands of an agent, the statement of claim shall be written on paper bearing a stamp of one-fourth the value prescribed for suits instituted in the Civil Court. In all other suits the statement shall be written on paper bearing a stamp of the value of eight annas. No stamp shall be required in respect of the production or filing of any document, or the summoning of any witness, or of any application for the execution of any order or judgment passed in a suit under this Act."

MR. PEACOCK objected to the provision which entitled a plaintiff to recover money in the hands of an agent at a cheaper rate than other sums. He also objected that the proposed uniform 8-annas stamp for all other suits would operate hardly upon poor suitors.

After some discussion, the Council divided:—

Ayes 7.	*Noes* 1.
Sir C. Jackson.	Mr. Peacock.
Mr. Forbes.	
Mr. Harington.	
Mr. Currie.	
Mr. LeGeyt.	
Mr. Ricketts.	
The Chairman.	

So the Section was carried.

Sections XXXVIII to LXX were passed as they stood.

Section LXXI was passed after a trifling amendment.

Sections LXXII to LXXXI were passed as they stood.

Sections LXXXII and LXXXIII were severally passed after a verbal amendment.

Section LXXXIV was passed as it stood.

Section LXXXV provided for process of execution being taken out against a surety failing to deliver judgment-debtor into custody.

MR. CURRIE proposed the addition of the following words to the Section:—

"If the decree be for the delivery of papers or accounts, and the defendant be not present when judgment is pronounced, and the surety shall fail to deliver him into custody when required so to do, execution may be taken out against the surety for the sum due under the bond in the same manner as if a decree for that sum had been passed against the surety."

The Motion was carried, and the Section as amended then passed.

Sections LXXXVI to XCII were passed as they stood.

Section XCIII related to the issue of warrants against the person.

MR. CURRIE moved the addition of the following words to the Section:—

"If the decree against any person arrested under a warrant be for the delivery of papers or accounts, and the papers or accounts shall not be delivered by him when he is brought before the Collector, such person may be committed to the Civil Jail, there to remain for such time not exceeding six calendar months, as the Collector shall direct, unless he shall in the meantime deliver the papers or accounts according to the terms of the decree."

The Motion was carried, and the Section as amended then passed.

Sections XCIV to CX were passed as they stood.

Section CXI was passed after a trifling amendment.

Section CXII provided that the produce of the land was to be held hypothecated for the rent, and that arrears of rent might be recovered by distraint, except in certain cases.

MR. CURRIE (in consequence of a suggestion received from the North-

Western Provinces) moved the addition of the following Proviso :—

"Provided further that in Putteedaree estates situated in districts under the Government of the Lieutenant-Governor of the North-Western Provinces distraint shall be made only through a Lumberdar."

The Motion was agreed to, and the Section as amended then passed.

Sections CXIII to CXVI were passed as they stood.

Section CXVII was passed after a verbal amendment.

Sections CXVIII to CXLI were passed as they stood.

Section CXLII was passed after a trifling amendment.

Sections CXLIII to CXLVI were passed as they stood.

Section CXLVII provided for the punishment by the Collector of any resistance or opposition to his lawful process under this Act.

MR. CURRIE said, it was provided by Section CLI that all orders passed by a Collector, except orders relating to the trial of suits or to the execution of decrees, should be appealable to the Commissioner. He thought, and it was so intended, that orders under this Section should be so appealable; but it was possible that they might be held to fall under the exception to which he had referred. In order to prevent this, he moved the addition of the following words to the Section :—

"Orders passed by Collectors under this Section shall not be deemed to be orders relating to the trial of suits, or to the execution of decrees within the meaning of Section CLI."

The Motion was carried, and the Section as amended then passed.

Section CXLVIII was passed as it stood.

MR. PEACOCK moved the introduction of the following new Section after Section CXLVIII :—

"If, in a suit before a Civil Court for any cause of action hereby made cognizable by the Collector, it be brought to the notice of the Court that a suit for the same cause of action has been previously brought before the Collector, the suit shall be dismissed. In like manner, if in a suit instituted before a Collector it shall be brought to the notice of the Collector that a suit for the same cause of action has been previously brought before a Civil Court, the Collector shall dismiss the case."

Agreed to.

Sections CXLIX to CLXIV were passed as they stood.

Section CLXV was passed after the insertion of the word and figures "1st August 1859" as the date of the commencement of the Act.

Section CLXVI (or the Interpretation Clause) was passed after the omission of the interpretation of the word "Collector" on the motion of Mr. Ricketts

MR. PEACOCK moved the addition of the following Section to the Bill :—

"No Deputy Collector holding the office of Deputy Magistrate, or entrusted with Police duties, shall exercise any judicial powers or other jurisdiction under this Act."

THE CHAIRMAN, in proposing the Section, said that he would also read the following Section which had been put into his hand, and which Sir Charles Jackson intended to move in the event of the present Section being lost :—

"No Deputy Collector shall exercise any judicial powers or other jurisdiction under this Act if entrusted with any Police functions."

MR. CURRIE proposed, by way of amendment, that the consideration of the proposed Section be postponed. This Motion, he said, had reference to a question already discussed and, as he had thought, settled. He was under the impression that the vote then taken had determined the question of the jurisdiction to be assigned to the Deputy Magistrates and Deputy Collectors. He thought that the question ought not to be re-opened in the absence of any of the Members who had voted in the previous discussion.

MR. PEACOCK said, he saw no reason for postponement on account of the absence of some Members. If this were admitted, the absence of the Governor-General might be assigned as a reason for adjournment. They were now called on to say whether these Deputy Collectors should have certain powers? Were they to create this jurisdiction, and give it to Officers who at the same time exercised Police functions?

MR. RICKETTS said, he had on more than one occasion lately expressed

himself favorable to the principle involved in the amendment, but a Clause in a Rent Bill did not appear to him a fit place in which to alter the executive machinery of the whole country. If the Honorable and learned Member would bring in a Bill to separate Police from Revenue powers, he would gladly give it his support, but he should vote against the amendment now proposed.

MR. HARINGTON said, he would support the Motion for adjournment. The Section which the Honorable and learned Member of Council on his left (Mr. Peacock) wished to introduce involved a very important principle. Most Honorable Members would probably wish to make some remarks upon it, but at this late hour, it being now nearly 5 o'clock, there would scarcely be time for them to do so. He certainly thought that the decision to which they had come upon the Section, which determined in what Courts or by what Officers cases cognizable under the Bill might be heard, had finally disposed of that point, and he believed he might say that every Honorable Member who voted on that Section, understood that the Collectors and Deputy Collectors, who would be competent to try and determine the cases falling within its provisions, might also be invested with Criminal jurisdiction as well as with Police functions. The Section proposed by the Honorable and learned Member of Council on his left would restrict the jurisdiction of those Officers to Revenue matters, and he certainly thought that all those who had voted on the Section, which had been passed with the amendment proposed by the Honorable and learned Member of Council, should also have an opportunity of voting on the new Section which he was desirous of introducing.

MR. CURRIE'S amendment being put, the Council divided :—

Ayes 4.	*Noes* 4.
Mr. Forbes.	Mr. Charles Jackson.
Mr. Harington.	Mr. LeGeyt.
Mr. Currie.	Mr. Peacock.
Mr. Ricketts.	The Chairman.

The numbers being equal, the Chairman gave a casting vote with the Noes, and so the amendment was negatived.

MR. PEACOCK'S Motion being then put, the Council divided :—

Ayes 3.	*Noes* 5.
Sir Charles Jackson.	Mr. Forbes.
Mr. LeGeyt.	Mr. Harington.
Mr. Peacock.	Mr. Currie.
	Mr. Ricketts.
	The Chairman.

So the Motion was negatived.

SIR CHARLES JACKSON'S Section was then put, and the Council divided :—

Ayes 4.	*Noes* 4.
Sir Charles Jackson.	Mr. Forbes.
Mr. LeGeyt.	Mr. Harington.
Mr. Peacock.	Mr. Currie.
The Chairman.	Mr. Ricketts.

The numbers being equal, the Chairman gave a casting vote with the Ayes, and so the Motion was carried.

Schedules A. B. and C. were passed as they stood.

Schedule D. was passed after a trifling amendment.

Schedules E. F. and G., and the Preamble and Title, were passed as they stood.

The Council having resumed its sitting, the Bill was reported with amendments.

JAMSETJEE JEEJEEBHOY'S ESTATE.

MR. LEGEYT postponed the Motion (which stood in the Orders of the Day) for the re-committal of the Bill "for settling a sum of money, and a Mansion-house, and hereditaments called Mazagon Castle, in the Island of Bombay, the property of Sir Jamsetjee Jeejeebhoy, Baronet, so as to accompany and support the title and dignity of a Baronet lately conferred on him by Her present Majesty Queen Victoria, and for other purposes connected therewith."

WARRANTS OF ATTORNEY AND COGNOVITS.

SIR CHARLES JACKSON gave notice that he would, on Saturday the 16th Instant, move the first reading of a Bill "to provide for the due execution of Warrants of Attorney to confess judgments and cognovits."

JAMSETJEE JEEJEEBHOY'S ESTATE.

MR. LEGEYT moved that the Bill "for settling a sum of money, and a Mansion-house, and hereditaments called Mazagon Castle, in the Island of Bombay, the property of Sir Jamsetjee Jeejeebhoy, Baronet, so as to accompany and support the title and dignity of a Baronet lately conferred on him by Her present Majesty Queen Victoria, and for other purposes connected therewith" be referred to a Select Committee consisting of Mr. Peacock, Sir C. Jackson and the Mover, with instructions to report on what alteration may be necessary to give due effect to the substitution as trustees of the trust property of certain public Officers of the Bombay Government for the Governor in Council at that Presidency, and to report to the Council on Saturday next.

Agreed to.

ADJUDICATION OF FORFEITURES.

MR. HARINGTON gave notice that he would, on Saturday the 16th Instant, move the first reading of a Bill "relating to Forfeitures of Property."

POLICE (PRESIDENCY TOWNS AND STRAITS SETTLEMENT).

MR. CURRIE moved that the Bill "to amend Act XIII of 1856 (for regulating the Police of the Towns of Calcutta, Madras, and Bombay, and the several stations of the Settlement of Prince of Wales' Island, Singapore, and Malacca") be referred to a Select Committee consisting of Mr. LeGeyt, Mr. Forbes, and the Mover.

Agreed to.

IMPRISONMENT OF EUROPEANS AND AMERICANS.

SIR CHARLES JACKSON gave notice that he would, on Saturday the 16th Instant, ask the following question.

Whether the Government have taken any, and if any, what steps for the erection of a Jail in a suitable climate for the reception of European or American convicts sentenced to terms of Penal servitude under Act XXIV of 1855?

The Council adjourned.

Saturday, April 16, 1859.

PRESENT:

The Hon'ble J. P. Grant, Senior Member of the Council of the Gov.-Genl., Presiding.

Hon. Lieut.-Genl. Sir J. Outram,
Hon. H. Ricketts,
Hon. B. Peacock,
P. W. LeGeyt, Esq.,
E. Currie, Esq.,
H. B. Harington, Esq.,
H. Forbes, Esq.,
and
Hon. Sir C. R. M. Jackson.

SIR JAMSETJEE JEEJEEBHOY'S ESTATE.

MR. LEGEYT postponed the presentation of the Report of the Select Committee on the Bill "for settling a sum of money, and a Mansion-house, and hereditaments called Mazagon Castle, in the Island of Bombay, the property of Sir Jamsetjee Jeejeebhoy, Baronet, so as to accompany and support the title and dignity of a Baronet lately conferred on him by Her present Majesty Queen Victoria, and for other purposes connected therewith."

SALE OF LANDS FOR ARREARS OF REVENUE (BENGAL).

MR. GRANT presented the Report of the Select Committee on the Bill "to improve the law relating to sales of land for arrears of Revenue in the Bengal Presidency."

BREACHES OF CONTRACT BY ARTIFICERS, &c.

MR. CURRIE presented the Report of the Select Committee on the Bill "to provide for the punishment of breaches of contract by Artificers, Workmen, and Laborers in certain cases."

WARRANTS OF ATTORNEY AND COGNOVITS.

SIR CHARLES JACKSON moved the first reading of a Bill "to provide for the due execution of Warrants of Attorney to confess judgment and cognovits." He said that, in consequence of some irregularities which had lately occurred in the execution of these documents, it had appeared to the late Chief Justice and other Members of

the Supreme Court that the English Act on the subject should be introduced into this country. That Act had operated most beneficially in England, and he hoped it would be equally useful here. If it was necessary to protect persons executing such documents in a civilized country like England, it was more especially necessary here where the persons executing them were often natives ignorant of the English language, and sometimes native women who were generally utterly ignorant of business and their own rights. The present Act adopted the phraseology of the English Statute.

Section I provided that no warrant of Attorney or cognovit should be of any force unless executed by a person in the presence of an Attorney expressly named by him, and attending at his request to inform him of the nature and effect of such warrant or cognovit before the same was executed. And then Section II provided that warrants or cognovits not so executed should not be rendered valid by proof, that the persons executing them did in fact understand the nature and effect of them, or was fully informed of the same,—it being the object of the Act to render an attestation by an Attorney necessary in all cases.

The Bill was read a first time.

ADJUDICATION OF FORFEITURES.

MR. HARINGTON moved the first reading of a Bill to provide for the adjudication of claims to property seized as forfeited. He said, shortly after the breaking out of the recent mutiny in the native army of Bengal, the Council, as Honorable Members would recollect, was called upon to pass several special laws for the trial and punishment of heinous offences in certain Districts. These laws were of a very rigorous and stringent character, though he believed that they were not more severe or more stringent than the circumstances of the country demanded at the time they were passed. To quote the words of the Honorable and learned member of Council on his left (Mr. Peacock), "extraordinary times required extraordinary measures." When these laws were proposed no difference of opinion arose, either in the Council or elsewhere, as to the absolute necessity which existed for arming the executive with the very large powers described in them, and with one exception the Bills which were brought in by the Honorable and learned Member of Council passed through their several stages and became law at a single sitting of the Council without a dissentient voice. At the same time it was felt that the character of some of these laws was such that they ought not to be allowed to remain in force a day longer than the necessity which had called them into existence lasted, and it was accordingly provided that they should cease to have effect after the expiration of twelve months from the date of their passing. It was afterwards found necessary to extend this period to the end of the current year, when all or most of the Acts to which he was referring would expire. In many Districts, indeed, the restoration of order and the general tranquillity which prevailed had already enabled the Executive Government, in the exercise of the discretionary power vested in it, to suspend the operation of some of these laws, and where this had been done, crime when it occurred was enquired into, and the accused were tried with all the usual formalities by the established local Courts, and, on conviction, punishment was awarded under the general Regulations which were placed in abeyance by the temporary Acts of the year before last in those places to which their provisions extended. During the time that those Acts had been in operation, a large number of convictions had taken place under them which, for the most part, had entailed on the parties convicted and sentenced the loss of their entire property, real and personal. It might be that in some cases the sentences were passed on evidence which in quieter times would have failed to satisfy the presiding Judges of the ordinary Courts of the country, but he (Mr. Harington) could not doubt for a moment that in every instance the Court or Judge who passed the sentence felt fully convinced of the guilt of the accused, however summary might have been the

trial held, however brief the record of conviction. In fact, in a large number of cases it was very possible that no record was forthcoming This could be no matter of surprise, for it must frequently have happened that the guilty parties were taken red-handed, and immediately tried and punished when the troops were on the line of march, probably in hot pursuit of rebels, and that the trials were held at places where materials for recording the investigation and conviction were not procurable. No appeal could, of course, be permitted from these sentences, and there was no Court competent to call in question the legality of the conviction or order passed. It must be unnecessary for him to say that to give such a power to any Court, particularly at the present time, would be highly impolitic and injudicious, and that if given, in the great majority of cases it would be of little or no use. With the restoration of order and the return of tranquillity a large number of persons had come forward to claim property forfeited or seized as liable to be forfeited to Government. In some cases the owners of the property were the claimants, in others their heirs or representatives, and in others the property was claimed by third parties, on the ground either that it had been mortgaged or leased to them before it was seized, or that they were themselves the proprietors. With the decision, on the merits, of the claims of parties belonging to the class last mentioned the Bill, of which he was about to move the first reading, did not propose to interfere further than to subject them to be tried by Special Courts, wherever such Courts might be established, and to require that in order to their being heard, they should be instituted within the period of one year from the date of the seizure of the property. This was, indeed, already the law, and the Bill would not therefore introduce any alteration in this respect. At present all these claims were heard and determined by the Judges of the Zillah Courts, according to the rules of procedure applicable to those Courts, and a regular appeal lay from their decision to the Sudder Court. But it must be obvious that if appeals were preferred in any large number of the cases now pending, or which might hereafter be instituted in the Zillah Courts, as would very probably be the case, they would add very seriously to the work of the Sudder Court, which was already so heavy that the Court found it almost impossible to keep pace with it. Under these circumstances it seemed desirable to invest the Government with power to constitute Special Courts for the trial and determination of claims arising out of the forfeiture or seizure of property, under any of the Acts already alluded to, of sufficient strength, and of such a character as would justify this Council in giving a finality to their decisions, and in declaring that they should not be open to revision or appeal. The Bill made provision for the constitution of such Courts. It had occurred to him that Courts of the nature contemplated might be established at the Sudder Station of every Division, and might consist of the Commissioner of the Division, the Judge of the District, and the Principal Sudder Ameen. This would be a very strong Court, and he thought that no exception could be taken to its composition. He was aware that it might be objected that the officers named by him, having other important duties to perform, would be unable to devote the requisite quantity of time to the disposal of the cases which would come before them under the Bill, but if the preparation of the cases were left to the Judge or Principal Sudder Ameen, for which the Bill contained a provision, he did not think that the mere disposal of the cases would occupy much time, and he was not disposed therefore to attach any weight to the objection. From a return which he had received of the number of cases now pending, he was led to believe that, although their decision would press heavily upon a single Court, if distributed amongst several Courts, they would admit of being disposed of within a reasonable period without much difficulty. According to the scheme contemplated by him, there would be five Divisional or Special Courts, one at Benares, one at Allahabad, one at Agra, one in Rohilkund, and one at Meerut. Another advantage of the establishment of Courts such as he had

proposed, would be that they would cost the Government nothing. What he had mentioned on the subject of the composition of the Courts, which if the Bill should become law, the Government would have power to establish, was of course thrown out only by way of suggestion. In existing circumstances he did not consider that it would be expedient to prescribe by law in what manner the proposed Courts should be composed. This he thought had better be left entirely to the discretion of the local Government. The Bill contained rules of procedure for the trial and determination of the cases which would fall within its provisions. It was intended that the procedure should be very summary, but he hoped that the rules which had been laid down would admit of a sufficiently full enquiry being made into the circumstances of each case to enable the Court to come to a just decision. The only other remark which he would make as respected the part of the Bill which related to the establishment of Special Courts, and to the procedure to be followed by them, was that he was informed that the Sudder Court at Agra were now engaged in disposing of appeals which had been instituted so far back as the years 1855 and 1856. For political reasons, as well as on account of Government, of the parties who laid claim to property seized or forfeited, and of those who were now in possession of such property, it was obviously of the utmost importance that all claims having reference thereto should be heard, and finally determined without any unnecessary delay.

He would now pass on to the remaining two classes of claimants of property seized as forfeited to Government, namely those who claimed to be the owners of the property, or their heirs or representatives. The two classes might be considered together. The grounds on which these persons claimed restitution of the property were that the sentences of conviction passed in the cases in which the property had been seized, contained no order of forfeiture, or that there had been no formal adjudication of forfeiture, or that there was no record of conviction. Restitution was also claimed on the ground of some irregularity of procedure, or of some defect or informality in recording the conviction. He was given to understand that a good deal of property, seized as forfeited to Government, had already been released on one or other of these grounds, and that in some instances the orders had been passed, not only summarily and without any trial, but by Judges or Special Commissioners whose jurisdiction in the particular cases in which the orders were given had ceased. He would not occupy the time of the Council by entering into a detail of the circumstances of the cases which had been brought to his notice. Honorable Members would probably be satisfied with his assurance that such cases had occurred, and he thought that they would agree with him that the claims of the law should not be defeated, and that the Government should not be defrauded of its just rights simply because of some irregularity of proceeding not in any way affecting the real merits of the cases in which it had taken place. When great crimes had been committed, he thought that the perpetrators of those crimes should not escape the just punishment awarded to them by law, on some merely technical ground; that when a penalty had been incurred its enforcement should not be stayed, to quote the words of the Honorable Member for Madras in the speech with which he introduced his Bill relating to Oaths and Affirmations, because some *i* had not been dotted or some *t* not crossed. The last five Sections of the Bill contained provisions to meet cases of this description. One of these Sections also declared that any order or decision which had already been passed contrary to those provisions should be treated as a nullity. He thought there could be no doubt as to the propriety or justice of thus dealing with such orders and decisions. He would only further observe that since he gave notice of the Bill he had seen reason to change its title. He considered that the title now given to the Bill would be found more appropriate than that originally proposed.

With these remarks he begged to move the first reading of the Bill.

The Bill was read a first time.

CATTLE TRESPASS.

MR. CURRIE moved the first reading of a Bill "to amend Act III of 1857 (relating to trespasses by Cattle)." In doing so, he said that he had but a few words to say in explanation of the Bill.

The Council were probably aware that, under the provisions of Act III of 1857, fines might be levied from the owners of cattle found trespassing and doing damage, or staying in any public place. The Act also provided that stray cattle, if not claimed within seven days from the date of their being impounded, might be sold after sufficient notice; and Section XII provided that "the sums received on account of fines and the unclaimed proceeds of the sale of unclaimed cattle shall form a fund which shall be available for the payment of any salaries which may be allowed to pound-keepers under the orders of the local Government, or expenses incurred for the construction and maintenance of pounds, or for any other purpose connected with the execution of this Act."

At the time of passing that Act, it was not supposed that the receipts of the fund would much exceed what would be required to cover the disbursements, if indeed they were sufficient for them; but the case had turned out differently. He had received an account of the receipts and disbursements of the fund for the 2nd and 3rd quarters of 1858, showing a surplus in every district, and in some districts a very large one. As the receipts of the fund could under Section XII be applied only to the purposes of the Act, it had become necessary to give legal sanction to the appropriation of the surplus to other purposes. This Bill accordingly provides, in accordance with the recommendation of the Lieutenant-Governor of Bengal, that it should be applied, in the same manner as the surplus Ferry Fund, to the construction and repair of roads and other local improvements generally.

The Bill was read a first time.

ESTABLISHMENT OF MARKETS.

MR. CURRIE moved the second reading of the Bill "for regulating the establishment of Markets."

MR. PEACOCK said, he could not give his assent to the principle of the Bill. He saw no sufficient reason for passing it. The effect would be to create a monopoly. He did not quite understand what was the law here on this subject. The Bill left the law undefined after providing that no one should set up a market without previously obtaining the Magistrate's permission. In England a market was a franchise. Frequently Lords of Manors possessed such franchises, but they could not be created without a grant from the Crown. As in other cases, after a certain length of time, such a grant would be presumed. Before the Crown granted a market, a writ of *ad quod damnum* issued, under which the sheriff enquired whether the new market would be injurious to existing markets. If he found that it would not, still his finding might be traversed, and the question in this way submitted to a jury for trial. Whether this prerogative of the Crown extended to India had not been decided. Considerable discussion had taken place on this subject with reference to the Patent law. When the Council passed the law for granting exclusive privileges to inventors, the law officers of the Crown were of opinion that the royal prerogative was infringed, and the Act was disallowed. If the Crown's prerogative existed here, the Bill would require to be sent home for the royal sanction.

The Bill provided that Magistrates should hold an enquiry and settle the matter. No one could establish a market without his consent. Suppose the Magistrate should grant a license, it created a monopoly in the owner of the land; and, if not interfered with, he could charge what toll he pleased; no one could interfere or compete with him. He thought free-trade in such matters was the best system.

It was said that affrays took place in consequence of the establishment of rival markets, but affrays likewise arose from disputes about the use of water and many like matters. Was the Magistrate called upon to grant any license in such cases? The Magistrate could interfere effectually to suppress affrays, from whatever cause they might arise Because the exercise of the right of

permitting others to come upon his land to buy and to sell caused affrays, was the landholder to be told by the law that he should not allow persons to resort to his land for such purposes, unless he obtained a Magistrate's license?

MR. CURRIE said, this opposition had taken him entirely by surprise. He thought that he had shown ample grounds for the passing of such a Bill. Unfortunately there had been an omission to print one of the most important papers, which he had read to the Council when he moved the first reading of the Bill, and he had it not at hand to refer to—it was a letter from Mr. Seton Karr, the Sessions Judge of Jessore, containing a report of a case in which an indigo factory was attacked, and the planter severely wounded. In that letter it was stated how constantly the opening of new markets led to serious breaches of the peace. Mr. Seton Karr said, and he believed truly, that it scarcely ever happened that a new bazar was opened to meet the wants of the community; it was almost always for the purpose of annoying an antagonist, and the consequence was quarrels and disturbances.

Similar was the testimony of the Joint Magistrate of Bograh. He said—

"The ultimate result is in every case either that one haut destroys the other entirely, or that both are deserted for some more peaceable place of trade. So far is trade from being facilitated, that it comes completely to a stand-still whenever these quarrels arise."

It was very well to say that it was the duty of the Magistrate to prevent affrays and breaches of the peace. It was not possible to do this effectually while a perpetually recurring cause of dispute remained. The only efficient remedy was to strike at the root of the evil in the manner proposed in this Bill.

He had been asked what was the law on the subject of markets in this country. The law as laid down by the Sudder Court seemed to be that the zemindar might do pretty much as he pleased. The practice, however, had been for the Magistrate to interfere in cases of disputes concerning new hauts, and to fix the days on which rival markets were to be held. This had been the practice from the commencement of our rule in this country up to the year 1830, when the Sudder Court, by a Circular Order, directed that Magistrates had no power to interfere in such matters.

As to the Bill being an interference with the prerogative of the Crown, he would only observe that at present owners of land under an order of the Sudder Court were allowed to exercise the power which it was suggested might belong to the prerogative; he did not think there would be much risk in giving the same power to Magistrates by an Act of the Legislature.

He had also been asked what rights the establishment of a Market conferred. The levy of dues by owners of Markets was strictly prohibited by law, but they had apparently a right to consideration in the nature of ground rent from the stall-holders and vendors who were allowed to sell on their ground.

Notwithstanding what had been said, he confessed that he could see no objection to the principle of the Bill, and it appeared to him that some measure of this kind was essentially necessary for the maintenance of peace and order.

The Council divided:—

Ayes 7.	*Noes* 2.
Mr. Forbes.	Sir Charles Jackson.
Mr. Harington.	Mr. Peacock.
Mr. Currie.	
Mr. LeGeyt.	
Mr. Ricketts.	
Sir James Outram.	
The President.	

So the Motion was carried, and the Bill read a second time.

RECOVERY OF RENTS (BENGAL).

On the Order of the Day being read for the third reading of the Bill "to amend the law relating to the recovery of Rent in the Presidency of Fort William in Bengal"—

MR. CURRIE moved that the Bill be re-committed to a Committee of the whole Council for the purpose of considering proposed amendments therein.

Agreed to.

Section XXIII related to the cognizance of suits.

MR. CURRIE said, he would endeavor to be as brief as possible in explaining his reasons for proposing to change the alteration which was made in this Section at the last meeting. Honorable Members would recollect that, in a long debate which had transpired on that occasion, objections were taken to the exclusive jurisdiction in suits under this Bill being assigned to Revenue Officers. The principal objection was that a large proportion of the officers who were to exercise that jurisdiction were disqualified for the duty by their being invested with Police powers. The Honorable and learned Member (Mr. Peacock) had said that his objection was not to giving jurisdiction to those officers as Deputy Collectors, but as Deputy Magistrates having executive Police functions.

After a full discussion, divisions were had on the several Clauses of the Section, and it was decided by large majorities that judicial powers should be given to the Revenue Authorities in each class of cases to which the several Clauses referred. Subsequently, however, an amendment was made at the end of the Section on the motion of the Honorable and learned Member opposite (Mr. Peacock), the consequence of which was that the regular Courts would also have jurisdiction in these cases. He (Mr. Currie) felt that this alteration would seriously endamage the Bill; but he considered that at any rate the decision which had been arrived at was final as regards jurisdiction. He was very much surprised to find therefore, when they came to the end of the Bill, that a Section was introduced on the motion of the Honorable and learned Member, or rather on an amendment of that motion by the learned Judge on his left (Sir C. Jackson), restricting Deputy Collectors entrusted with Police functions from exercising any judicial powers or other jurisdiction under the Act.

Now if these amendments were to stand, the effect of them taken together would be, under existing arrangements, to give the whole jurisdiction to the Civil Courts, unless suitors chose to take their suits to the Sudder Stations. But he could not think that Honorable Members, who voted in the majorities on Section XXIII, intended so to nullify their votes. He could not suppose that the Honorable Chairman, whose second vote carried the new Section, intended thereby to take away the jurisdiction which by his votes on Section XXIII he had given to the Deputy Collectors. He (Mr. Currie) assumed that it was in the Honorable Chairman's intention, as it would shortly be in his power, to qualify these officers when in charge of Sub-divisions for acting under the Bill by divesting them of their Police functions. He was the more persuaded that this would be the case, as he saw an evident determination in a large majority of the Members of this Council to separate the charge of the Police from all other duties, and to vest it in separate officers. Then assuming that we would have local Revenue Courts qualified to try these cases, he could see no occasion for the co-ordinate jurisdiction of the Civil Courts. His objections to such jurisdiction he had stated last Saturday. He had said that the Courts of the Moonsiffs were not fit Courts for the trial of these particular cases. He had stated that it appeared to him that the class of persons from which the Moonsiffs were for the most part taken was not of such a social status that it could be reasonably expected that the young men who, after passing a technical examination, were appointed Moonsiffs, would be able to resist the influence of wealth and power to which they would find themselves exposed. It was to be remembered that in cases under this Bill the contest was almost always between the rich and powerful on the one hand, and the poor and weak on the other. The special object of the Bill was to secure justice to the ryot. If therefore they could establish a more independent Court than the Moonsiff's Court, they ought to provide, according to the original terms of the Bill, that all these cases should be tried in that Court; and that it should not be in the power of a zemindar to take a ryot to another Court, where he would not have the same chance of getting a proper hearing. Another reason for objecting to giving jurisdiction to the Civil Courts was that, according to measures in contemplation for the reconstitution of the Civil Courts, the number of Moonsiffs,

under the operation of the proposed Small Cause Courts, might be considerably reduced, but then it would be necessary to provide for the determination of rent suits; and one of the recommendations of the new class of Courts was that it would enable them in time perhaps to dispense altogether with the Moonsiffs' Courts.

What he had said referred chiefly to the Lower Provinces of Bengal, and he would remark that throughout these debates the state of things in Bengal had been too exclusively considered. It seemed to be forgotten that at least one half of the territories to which this Bill would apply was under the Government of the North-Western Provinces; and no one who had any knowledge of the circumstances of those Provinces doubted the desirability of removing rent cases from the cognizance of the Civil Courts. In the year 1850 two Judges of the Agra Sudder urged the local Government to obtain a law for the purpose. This was not done, but large strides were made in the same direction. The whole of the Collectors had been invested with full powers under Section XX Regulation VII. 1822, in all cases relating to disputes between landlord and tenant, and whenever such cases were taken into the regular Courts, they were required by a rule of practice to be referred to the Collector for adjustment and report. So that in effect these cases were very much in the hands of the Revenue Officers, and he had no doubt of the expediency of placing them so entirely. With reference, therefore, to the circumstances of the North-Western Provinces, and to what he had stated regarding the Moonsiffs in the Lower Provinces, he urged the adoption of the amendment which he was about to move.

Mr. Currie referred to several parts of the Bill as it now stood, which laid down rules of procedure for the Collectors, observing that they would not apply to the Civil Courts, and that the difference of procedure in different Courts in the same classes of cases would cause doubt and embarrassment. He did not consider this as in itself a sufficient reason for urging an alteration of the Section in question. In adducing it, he only intended that it should be taken into consideration in connection with the other reasons urged by him.

With these remarks he begged to move the substitution of the word "shall" for the word "may" in the 37th line of the Section.

MR. PEACOCK said, it was very inconvenient after full discussion that the Bill should be re-committed. It was not certainly contrary to the Standing Orders, but the primary object of the Standing Order relating to re-committal was to enable errors to be corrected. He recollected that the Committee by whom the Standing Orders were prepared considered whether it should be forbidden to re-open a matter which had been discussed and determined. It was thought that no express order on such a subject was requisite.

Why were they called upon to take away the jurisdiction conferred last Saturday? What was intended to be done under the law as it had been now amended? Were the officers who, as had been proposed, were to be appointed Deputy-Magistrates, to have their Police functions taken away because they were now required to act as Deputy Collectors; or were distinct Deputy Collectors to be appointed? In the latter case, would the finances support the double set of officers?

SIR JAMES OUTRAM said that, being one of those who voted last Saturday for the amendment which it was now proposed to alter, he begged to be allowed to explain that, in voting for the present motion, he had not the slightest intention of nullifying his original vote. His impression at the time was that by allowing litigants the option of going into the old Courts, if they preferred it, the defendant must be a consenting party, without which the new Courts provided by this Bill must be resorted to. Had he known that the power of choosing the Court would rest with the plaintiff alone, he should have voted against and not for the amendment in question.

MR. HARINGTON said, referring to what had fallen from the Honorable and learned Member of Council on his left (Mr. Peacock) in respect to the course pursued by the Honorable Member for Bengal on the present occasion,

he was willing to admit that there was an inconvenience in re-opening questions which had been settled after full discussion, but there was one consideration which must, he thought, out-weigh and over-ride all other considerations, and that was the duty which rested upon them of making every Bill, at any and every stage, as perfect as was in their power before it passed into law. He found this principle to have been clearly enunciated by their late highly respected Vice-President not very long before he left them; he said, "he thought that it would be very unwise for the Council to lay down a rule against re-considering a matter on which a vote had once been taken. Their object was to make their Bills as perfect as possible, and upon many subjects of debate Honorable Members might be found to alter the opinion which they had previously expressed." This had actually happened as regarded the question now under discussion. The Honorable and gallant General (Sir James Outram) had frankly told them, that his opinion had undergone a change upon that question since it was last debated, and it appeared to him (Mr. Harington) that the Honorable and gallant Member had stated a very good and sufficient reason for the alteration which had taken place in his views. Other Honorable Members who had voted with the Honorable and learned Member on his left, on Saturday last, might also see cause to change their opinions particularly in consequence of the introduction into the Bill, after the Section under discussion was settled, of the new Section proposed by the Honorable and learned Judge opposite (Sir C. Jackson). If he had understood the Honorable and learned Member of Council rightly, his principal objection to the transfer to the Deputy Collectors lately appointed in Bengal, of the jurisdiction which might now be exercised by the Civil Courts in the different classes of cases mentioned in the Bill, was that they were also Police Officers, and that their Police duties would often interfere with the proper discharge of the duties which would devolve upon them in the trial of those cases. He pointed out that as Civil Judges they might appoint a day for the hearing and decision of a suit instituted before them and direct the parties to be in attendance on that day with their witnesses and documentary proofs, but on the morning of the day which had been fixed for the trial and determination of the case, they might be summoned away to some other part of their jurisdiction to enquire into a case of murder or of dacoity, and that, when this happened, the suit pending before them in their capacity of Civil Judges must be postponed, to the serious loss and inconvenience of the parties and their witnesses; he also seemed to think that in the discharge of their duties as Police Officers ill-feeling would often spring up between these Deputy Collectors and the parties resorting to their Courts in their judicial capacity, which would prejudice their minds and might exercise an improper influence upon their decisions. He (Mr. Harington) was not prepared to say that there was no force in these objections; but he thought that they had been entirely removed by the new Section introduced on the Motion of the Honorable and learned Judge opposite, which declared that none of the Officers referred to should be invested with jurisdiction under the Bill who exercised any Police functions. There was, therefore, the less reason for retaining the permissive in lieu of the imperative character given to the Section under consideration at the previous Meeting of the Council. At the time that the Section was settled, as it now stood, he (Mr. Harington) believed that every Honorable Member who voted upon it considered the question as to what Officers were to hear and determine cases coming within the provisions of the Bill to have been finally determined, and that the Deputy Collectors who would be competent to try such cases would be also Deputy Magistrates, and as such invested with Police functions. This was certainly his own belief, and the Motion therefore of the Honorable and learned Judge, of which no previous notice or intimation had been given, took him quite by surprise.

When the Section was last under consideration, he had endeavored to point out what appeared to him to be the objection to Courts exercising co-ordinate

jurisdiction. Where such Courts existed, the plaintiff, who could elect in which Court he would bring his suit, enjoyed a privilege which, from the circumstances of the case, could not extend to the defendant, and which was not unfrequently exercised at his expense; but if it was right in principle that a plaintiff should have the power of choosing in which of two or more Courts he would sue, equal justice would seem to require that the defendant should have a similar power of determining in which Court he would make his defence. It must be obvious, however, that, if such a power were given to the defendant, it would cause great delay and confusion. This showed that a system of co-ordinate Courts operated unequally. If a plaintiff felt that it was more for his interest to go into this Court than into that, he must also know that it was less for the interest of the defendant to defend himself in the Court selected as that to try the action. The reason which had induced the plaintiff to give the preference to one Court over another would generally operate contrariwise in so far as the defendant was concerned, and lead him to wish that the suit had been brought in some other Court competent to hear it. When the Government had established sufficiently good Courts for the trial of a particular class of cases, he (Mr. Harington) thought that all persons concerned in cases of that description, whether as plaintiff or defendant, should be compelled to resort to those Courts and should not be permitted to go elsewhere.

Another objection which he had to the Section as now framed was that it would oblige the Government to keep up Courts which would not otherwise be required, or defendants might be dragged to a considerable distance to make their defence. This would often be just what the plaintiff desired. The plaintiff being generally the richer and more powerful man of the two, distance to him would be of far less consequence than to the defendant. For these reasons he should give his hearty assent to the amendment proposed by the Honorable Member for Bengal.

MR. LEGEYT said, on Saturday last he voted in favor of the substitution of "may" for "shall." He did so, because he felt a great objection to entrusting Executive Police Officers with the decision of civil suits. As the matter stood in respect to this Bill, he was glad to compromise by making it permissive to the suitors to go to the Civil Courts if they preferred. But the Section introduced by the Honorable and learned Judge at the end of the Bill so completely met his objections, that as by it Deputy Collectors having any Police charge would not have jurisdiction over the civil suits mentioned in this Bill, he should support the amendment now moved by the Honorable Member for Bengal. He thought that these descriptions of suits would be better decided by the Revenue than by the Civil Courts, and, therefore, he did not see why plaintiffs should have the power of forcing defendants into an Adawlut. He also hoped that, by relieving the Adawluts of these suits, the re-construction of those Courts might be facilitated; and this he considered an object of great importance.

But there was still one point on which he felt some doubt. It was this, whether the words Deputy Collector in the new Section went far enough. He (Mr. LeGeyt) would exclude every Revenue Officer exercising a Police charge from trying Revenue suits, and he thought that it was objectionable that this power should be left even with a Collector, who was also the Magistrate of a District and in charge of the Police. He did hope to see Collectors and Magistrates relieved from Executive Police duties, and was anxious to carry that principle as far it it could be carried.

MR. GRANT said, he did not quite know after that explanation what vote the Honorable Member for Bombay would give. He would not hesitate for a moment himself in changing his vote, if convinced that the Bill was rendered worse by the amendment which it was now proposed to cancel. He had listened to all the arguments advanced with a mind open to conviction, but he remained of opinion that the amendment, which left the Civil Courts with concurrent jurisdiction, was an important improvement. He took very much

the view taken by the Honorable and learned Judge (Sir C. Jackson) at the last Meeting. The natural course was that these suits should be tried by the Civil Courts. They were civil suits, and the Civil Courts were established for the trial of civil suits. This was not only the natural course, but it was also the law now, as the Civil Courts now had jurisdiction in these suits. Therefore everything appeared to be in favor of the existing state of things; and this being so, he certainly thought with the Honorable and learned Judge that it was the duty of those who wished to change the law, to show something objectional in it, not fancifully but practically objectionable. He thought it the business of a Legislature of practical men to require those who proposed such a change, to show that the existing law had in fact bad effects. But not one such instance had been mentioned either by the Honorable Member for Bengal or by the Honorable Member for the North Western Provinces, although, doubtless, the great experience of both the Honorable Members, if such cases existed, would have enabled them to mention them. A theoretical objection had been taken to co ordinate jurisdictions, and urged with great ability, but such jurisdictions existed now, and no one had shown that in practice any harm had been done by them. Such a system existed in all the Presidency Towns where the Supreme and Small Cause Courts had concurrent jurisdictions. Had any one heard of any practical mischief in consequence? In England such jurisdictions were common and worked well. For these reasons—not because he persisted in voting, as he had voted before, but because he still believed that the amendment was a real improvement—he would oppose the Motion.

MR. HARINGTON said, the Honorable Chairman had observed that neither the Honorable Member for Bengal, nor himself, had mentioned any cases to show that practical inconvenience had resulted from the present state of the law. He (Mr. Harington) had just recollected a case in which an influential zemindar brought a summary suit for rent in the Collector's office against a large body of cultivators, who were no otherwise connected than that they cultivated land in the same estate, and obtained a judgment. The defendants, being dissatisfied with the decision, proposed to contest it in the Civil Court; but, although the plaintiff was allowed, under the practice of the Revenue Courts, to institute a single action against them all on one sheet of stamp paper, they were each obliged to bring separate actions to set aside the award of the Revenue Officer upon full stamp paper proportioned to the amount of their several liabilities. Had the plaintiff brought his suit in the Civil Court in the first instance, he must have sued each cultivator separately, and have valued his claim accordingly, which did not suit his purpose. The Honorable Chairman had also noticed that in the Presidency Towns co-ordinate Courts existed; that in certain classes of cases the plaintiffs might bring their suits either in the Supreme Court or in the Court of Small Causes; and that he had never heard that this power had been abused. What the Honorable Chairman had stated was, no doubt, quite correct; but he (Mr. Harington) believed that the heavy expenses of the Supreme Court deterred parties from resorting to that Court, who could take their cases into the Small Cause Court, while in the Act constituting the latter Court he thought there was a Section, though he could not just then put his hand upon it, which enabled the Judges of the Supreme Court, whenever they considered that a suit had been unnecessarily instituted in that Court instead of in the Court of Small Causes, to refuse to allow the plaintiff his costs, though he might succeed in his action.

The Council divided—

Ayes 6.	*Noes* 3.
Mr. Forbes.	Sir Charles Jackson.
Mr. Harington.	Mr. Peacock.
Mr. Currie.	The Chairman.
Mr. LeGeyt.	
Mr. Ricketts.	
Sir James Outram.	

So the Motion was carried.

MR. CURRIE then moved the restoration of the following words at the end of the Section:—

"And except in the way of appeal as provided in this Act, shall not be cognizable in

any other Court, or by any other Officer, or in any other manner."

The Motion was carried, and the Section then passed.

The new Section after Section CXLVIII was omitted, on the Motion of Mr. Currie.

Sections CLX and CLXI were passed after amendments.

MR. CURRIE moved that the new Section at the end of the Bill stand after Section CLXIII.

Agreed to.

Mr. RICKETTS said, he desired to move an alteration in the above new Section. There were some Collectors who, because they were placed in charge of comparatively small districts, were called Deputy Collectors, although they exercised the same powers as Collectors. He therefore proposed after the words "Deputy Collector" to insert the words "appointed under Regulation IX. 1833 of the Bengal Code."

After some conversation, MR. LEGEYT moved that the words "No Revenue Officer not being a Collector" be substituted for the words "No Deputy Collector."

MR. HARINGTON said, the amendment proposed by the Honorable Member for Bombay would, if carried, seriously embarrass the Government of the North-Western Provinces, and he could not see that any practical advantage would result from its adoption, but the contrary. At present it frequently happened in the North-Western Provinces that a Joint Magistrate and Deputy Collector was placed in Police, Revenue, and Judicial charge of one or two Pergunnahs, of which he had the entire management, subject of course to the supervision and control of his immediate official superior. This was found to be a very good way of training up young men for the higher offices of Magistrate and Collector, in which the same functions, Police, Judicial, and Revenue, would have to be discharged under a much less degree of supervision and control in respect to an entire district. If the amendment of the Honorable Member for Bombay were carried, either the Police functions of the Joint Magistrates and Deputy Collectors must be taken away, or they would not be competent in their capacity of Revenue Officers to decide cases under the Bill. He should oppose the Motion.

MR. LEGEYT said, his object in proposing his amendment was to carry out the principle enunciated in the Section under discussion. It appeared to him that, if an Assistant or Deputy Collector, who was also a Deputy Magistrate, and as such exercising a control over the Executive Police, no matter what his standing might be, were empowered to exercise these Civil Judicial powers, it would certainly be an infringement of the principle they hoped to adopt. If the Executive Government chose to step in, and as a special case invest a Deputy Magistrate with the powers of a Collector, in fact make him a Collector for the purposes of this Bill, as it now stood, they could do so, but it was to be hoped such an exercise of power would not be frequent.

MR. LEGEYT'S Motion being put, the Council divided—

Ayes 4.	*Noes* 5.
Sir Charles Jackson.	Mr. Forbes.
Mr. LeGeyt.	Mr. Harington.
Mr. Peacock.	Mr. Currie.
The Chairman.	Mr. Ricketts.
	Sir James Outram.

So the Motion was negatived.

MR. RICKETTS' Motion was put and agreed to, and the Section as amended then passed.

MR. CURRIE said, by Regulation IV. 1821 the Collectors of Revenue were authorized, "with the sanction of the Board of Revenue, to delegate to their Assistants any part of their prescribed duties to which, from the extent of their general business or other cause, they might be unable to give due attention themselves." As it was not intended that Collectors should delegate to their Assistants the duties prescribed by this Bill, he proposed to insert the following new Section before Section CLXIV :—

"Assistants to Collectors shall not exercise any powers under this Act unless invested by Government with the powers of Deputy Collectors, in which case they may exercise the powers hereby assigned to Deputy Collectors."

After some conversation, the Section was agreed to.

A trifling amendment was made in Section CL.

The Council having resumed its sitting, the Bill was reported with amendments

MR CURRIE then moved that the Bill be read a third time and passed

MR. PEACOCK said, he was sorry to vote against the Bill, but he was not prepared to support it The jurisdiction of the Civil Courts was taken away, and he did not know what was to be substituted for it. He proposed to ask the Bengal Government, either directly or through the Government of India, how many Deputy Collectors there were. They might place the people in great difficulties if every man should be driven to the Cutcherry of the Collector or of the Assistant vested with full powers He begged to ask the Honorable Member to postpone the third reading for a week, that the desired information might be obtained If the Motion for the third reading were put, he would vote against it

MR CURRIE said, he did not think that the information proposed to be called for would at all help them He admitted that, at present, nearly all the local officers were invested with Police powers, but he apprehended that this arrangement was not intended to stand. At any rate the Collectors and Deputy Collectors who for years past had tried these cases to the number of 56,000 in the year, as had been stated, would be available for the duty as heretofore. There might be some temporary embarrassment from the introduction of the Section, under which no Deputy Collector entrusted with Police functions could exercise jurisdiction under the Bill But he saw no sufficient reason for delaying the third reading, and he would therefore press his Motion.

MR. RICKETTS said, he could not suppose that it was necessary to postpone the third reading. They might safely trust the Executive Government to provide Courts to carry out the provisions of the Bill

He could not give his vote in favor of the third reading without offering one word of congratulation to his Honorable friend at the prospect of this Bill passing into law. The Bill was equally creditable to the Honorable Members' great ability and to his untiring devoted industry. Few, very few, knew the trouble that the preparation of this Bill had occasioned Setting aside those Sections which had led to a difference of opinion (for a moment let them be forgotten), they would all agree that the work upon the whole was a right good work The Bill, if passed, would benefit all those who in this country were connected with the land, that is, it would benefit about thirty millions of people. That was a pleasant thought for the Honorable Member to put under his pillow, and go to sleep upon in a snug little room in the old country He had seen many instances of old servants who, when the time for retirement drew nigh, and when their thoughts were turned to the Westward, had gradually lost almost all their interest in the country where they had passed their days, and were content to do little more than just what was necessary to carry on the work of their office without occasioning unpleasant remarks A very different case was that of the Honorable Member They had all seen his Honorable friend working on to the last as he had worked at first, and in his mid career doing all he could for the good of the people. No brass—nothing of that sort—would commemorate his career here,—but should this Bill pass, he believed that Currie's Act would for long years to come, as long as we collected land revenue, till Bengal was sold, be a lasting memorial that as in earlier days so to the very last he worked on with success, and with that right honest spirit which had characterized his whole career as a servant of this Government

MR. CURRIE did not know whether he ought to say anything. He could not however refrain from saying that he felt most thankful to the Honorable Member, but at the same time deeply humbled by the terms in which his poor exertions had been spoken of Such praise was altogether undeserved by him The Bill of which his Honorable friend had spoken so highly was very little more than a compilation of the labors of others. Many had worked in the same field His Honorable friend himself had many years ago pre-

pared a summary suit law in supersession of the existing laws, and there were similar works by other hands. He had had the advantage of the labors of others, and had done little more than work out and put together the materials which they had prepared. He could not therefore take the credit which the Honorable Member had so kindly assigned to him.

MR. PEACOCK said, he fully concurred in what had been said by the Honorable Member of Council opposite (Mr. Ricketts). They were deeply indebted to the Honorable Member for Bengal. At the same time when they were called upon to remove jurisdiction from the ordinary Courts, they ought to see that Courts were provided and in sufficient numbers. Were the Deputy Magistrates appointed especially for Police Duties to be deprived of those duties that they might act under that Bill? He would rather improve the existing Courts than make these alterations. Were the present Deputy Collectors sufficiently numerous, without the appointment of others, to conduct trials under the new law? If they were called upon to vote blindly, he could not do it.

The Council divided—

Ayes 7.	*Noes* 2.
Mr. Forbes.	Sir Charles Jackson.
Mr. Harington.	Mr. Peacock.
Mr. Currie.	
Mr. LeGeyt.	
Mr. Ricketts.	
Sir James Outram.	
The President.	

So the Motion was carried, and the Bill read a third time.

The Bill having passed—

MR. PEACOCK gave notice of his intention to record his dissent.

PILOT COURTS (BENGAL).

Mr. CURRIE postponed the Motion (which stood in the Orders of the Day) for a Committee of the whole Council on the Bill "to make better provision for the trial of Pilots at the Presidency of Fort William in Bengal for breach of duty."

IMPRISONMENT OF EUROPEANS AND AMERICANS.

SIR CHARLES JACKSON said that, in pursuance of the notice of Motion which he had given last Saturday, he now proposed to enquire of the Executive Government, whether any and what steps had been taken for the erection of a jail in a suitable climate for the reception of European or American convicts sentenced to terms of penal servitude under Act XXIV of 1855. In doing so, he would observe that the policy of the law relating to this subject, previously to the passing of that Act, was to prevent Europeans from being sentenced to confinement for long terms in this country, and in fact the Courts never sentenced them to imprisonment for a longer term than two years with hard labor, and when the sentences were of a grave character requiring a more severe sentence, they were sentenced to transportation to the Australian Colonies. But in consequence of the Australian Colonies having objected to receive European or American convicts, there was no place to which such convicts could be transported from India, and Act XXIV of 1855 was accordingly passed, substituting penal servitude for transportation according to a graduated scale.

Since the passing of that Act a great number of European convicts had been sentenced to terms of penal servitude, and were now undergoing their sentence by suffering imprisonment in the Presidency towns. In his opinion the penal servitude of Europeans for lengthened periods in a jail, in the plains of India, was a cruel punishment, and would inevitably be attended with this consequence, that the prisoner would either die a lingering death, or he would be released by order of Government before the expiration of his sentence, and nothing was so detrimental to the due administration of justice as these interferences by the executive with the sentences of the ordinary Courts.

He understood that at the time of the passing of that Act it was the intention of Government to erect a jail in a healthy locality for European convicts. He had looked through the debates, but could find no express provision on the

part of Government to that effect; but the Honorable and learned Member opposite (Mr. Peacock) in introducing that Act adverted to the probability of only one jail being erected for all India, instead of providing a separate jail for each of the three Presidencies. He presumed then that there was such an intention, whether expressed or not, on the part of the Executive Government.

Since then four years had passed, and nothing had been done. He had no desire to impute any blame to the Government. He was fully aware of the very great difficulties which the Government had lately experienced, and from which it was only now recovering. Still he considered it quite time that something should be done, and he therefore begged to ask whether any steps had been taken in the matter or not.

MR. PEACOCK said, the Honorable and learned Judge was quite right in supposing that it was the intention of Government to erect a jail for the reception of European convicts in some suitable spot in a healthy climate. Shortly after the passing of Act XXIV of 1855 (on the 17th December 1855), the Government of India submitted to the late Honorable Court of Directors a proposal to erect a Central Jail on the Neilgherry Hills for European convicts, with accommodation sufficient for a hundred prisoners. The average number of Europeans annually sentenced to penal servitude, by all the Courts established by Royal Charter, did not exceed three. In 1856 (May 27th) the Honorable Court objected to sanction the expenditure, on the ground that it would be very inconvenient to send to such a distance one or two convicts at a time. After some intermediate correspondence, the Honorable Court, in a Despatch of 1857 (January 2nd) sanctioned the erection of a jail on the Neilgherry Hills, and informed the Government of India that they had transmitted a copy of that Despatch to the Madras Government. On the 12th March 1857 the Government of India wrote to the Madras Government, stating that the Government of India awaited the submission of a plan and estimate for the building. In the Madras Budget for 1858-59 there was entered an item of "a new jail chiefly for native prisoners at Ootacamund," at an estimated expense of thirty thousand Rupees. The Government of India at first demurred to this; but on the Madras Government explaining that the building was "designed partly as a prison for Europeans sentenced to penal servitude, until a larger prison could be constructed solely for their use," the Government of India, on the 28th September last, sanctioned the work expressly for Europeans. Lastly, it appeared, that on this sanction reaching Madras, doubts had been raised by the Officiating Chief Engineer there as to whether the design submitted was fitted for the reception of Europeans, and a specific report was called for from the Inspector of Jails. Since then no further communication had been received on the subject.

It appeared, therefore, that the erection of a jail had been sanctioned. He believed that the matter at present rested with the Inspector of Prisons and the Madras Government. He was glad, however, that the Honorable and learned Judge had asked the question, for he hoped it would expedite the business.

POLICE (PRESIDENCY TOWNS AND STRAITS SETTLEMENT).

MR. CURRIE wished to say a few words with regard to a remark which fell from the Honorable Member for Bombay at the last Meeting, on the occasion of the second reading of the Presidency Towns' Police Act Amendment Bill, that it would be a good suggestion to the Select Committee to take into consideration the expediency of introducing into the Bill some provision for the regulation of Hackery Coaches and Palankeens. At the moment he did not remember that he had received a communication on the subject from the Secretary to the Trades' Association, after he had prepared and introduced this Bill. He did not himself feel very confident as to the necessity or expediency of legislating on the subject. But still as it was one which had excited public attention, he would move that the communication received by him from the Calcutta Trades' Association, soliciting the enactment of a law for the regulation of Hackery Car-

Sir Charles Jackson

riages and Palankeens, be laid upon the table, and referred to the Select Committee on the Bill "to amend Act XIII of 1856 (for regulating the Police of the Towns of Calcutta, Madras, and Bombay, and the several Stations of the Settlement of Prince of Wales' Island, Singapore, and Malacca)," with instructions to consider the question, and if they thought legislation desirable, either to insert the necessary provisions in that Bill, or prepare a separate Bill.

He was inclined to think that, if anything on the subject were necessary, it would be better provided for by a separate Bill than by an addition to the Police Act Amendment Bill.

Agreed to.

NOTICES OF MOTION.

MR. HARINGTON gave notice that he would, on Saturday, the 23rd Instant, move the second reading of the Bill "to provide for the adjudication of claims to property seized as forfeited."

Also that he would, on the same day, move the third reading of the Bill "to provide for the Limitation of Suits."

MR. LEGEYT gave notice that he would, on the same day, move the second reading of the Bill "to empower Magistrates to decide certain disputes between contractors and workmen engaged in railway and other works."

MR. GRANT gave notice that he would, on the same day, move for a Committee of the whole Council on the Bill "to improve the law relating to sales of land for arrears of revenue in the Bengal Presidency."

LAND CUSTOMS (MADRAS & BOMBAY).

MR. PEACOCK moved to suspend the Standing Orders, in order to bring in a Bill "to alter the rates of Duty on goods imported or exported by land from certain Foreign Territories into or from the Presidencies of Madras and Bombay respectively." He referred to Act VI of 1844, Sections VI and VII, and Act XXIX of 1857, being the laws now in force for the levy of Land Customs in the Madras and Bombay Presidencies.

Inasmuch as the duties of Sea Customs had been altered, it became necessary that the Land Customs duties, which were imposed to prevent an import by land at a different rate, should be altered. He proposed to repeal the Sections above quoted, and to re-enact others, authorizing Government to levy Land Customs at the rate given by Act VII of 1859.

MR. HARINGTON seconded the Motion, which was carried.

The Bill was then read a first and second time on the Motion of MR. PEACOCK, and referred to a Select Committee, consisting of Mr. LeGeyt, Mr. Forbes, and the Mover, with an instruction to submit their Report at the next ordinary Meeting of the Council.

CRIMINAL PROCEDURE.

MR. CURRIE moved that a communication received by him from the Bengal Government on the subject of Special Appeals in criminal cases be referred to the Select Committees on the Bills for extending the jurisdiction of the Courts of Criminal Judicature of the East India Company.

Agreed to.

LAND CUSTOMS (MADRAS AND BOMBAY).

SIR CHARLES JACKSON said, he did not know if he was in order, but he desired to know when the Honorable and learned Mover of the Bill "to alter the rates of duty on goods imported or exported by land into or from the Presidencies of Madras and Bombay respectively" intended to proceed with the Bill, as he would like to have an opportunity of considering the Clause relating to contracts and agreements already made.

MR. PEACOCK said, the Clause was the same as that in the Act lately passed by the Council (VII of 1859). He would move, however, that the Honorable and learned Judge be added to the Select Committee on the Bill.

Agreed to.

LITERARY, SCIENTIFIC, AND CHARITABLE SOCIETIES.

MR. CURRIE moved, that Sir Charles Jackson be added to the Select Com-

mittee on the Bill "for the registration of Literary, Scientific, and Charitable Societies."

Agreed to.

NOTICES OF MOTION.

MR CURRIE gave notice that he would, on Saturday, the 23rd Instant, move that the following Select Committees be discharged :—Select Committee on the Bill "for the punishment of Chowkeydars for neglect of duty," Select Committee on the Bill "to extend the provisions of Regulation VI. 1810 of the Bengal Code."

The Council adjourned.

Saturday, April 23, 1859.

PRESENT:

The Hon'ble J. P. Grant, Senior Member of the Council of the Govr.-Genl., Presiding.

Hon. Lieut.-Genl. Sir J. Outram,
Hon. H. Ricketts,
Hon. B. Peacock,
P. W. LeGeyt, Esq.,
E. Currie, Esq.,
H. B. Harington, Esq.,
H. Forbes, Esq.,
and
Hon. Sir C. R. M. Jackson.

LIMITATION OF SUITS.

THE CLERK presented a Petition from Zemindars of Jessore against some of the provisions of the Bill "to provide for the Limitation of Suits."

MR. HARINGTON moved that the above Petition be printed.

Agreed to.

WILFUL INJURY TO PROPERTY.

THE CLERK presented a Petition from the Indigo Planters' Association, praying for an amendment of the law relating to wilful injury to property.

MR. CURRIE said, the question was considered by the Select Committee on the Cattle-Trespass Act. The Petitioners stated that that Act had repealed Section IV Regulation V. 1830, which related not only to Cattle Trespass, but to wilful damages to crop of any kind, and that consequently, except against Cattle Trespass, Indigo crop had less protection than under the Section of the Regulation which had been repealed. This was quite true, but the Select Committee had not considered it necessary to make any provision in consequence of the repeal of that Section, because by the Penal Code the offence of wilful damage to property would be punishable as "mischief." So whenever the Penal Code should be passed, the object of the Petitioners would be fully met. He should therefore now move that the Petition be referred to the Select Committee on "The Indian Penal Code."

Agreed to.

LAND CUSTOMS (MADRAS AND BOMBAY).

MR. PEACOCK postponed the presentation of the Report of the Select Committee on the Bill "to alter the rates of Duty on goods imported or exported by land from certain Foreign Territories into or from the Presidencies of Madras and Bombay respectively."

SMALL CAUSE COURTS.

MR. HARINGTON presented the Report of the Select Committee on the Bill "for the establishment of Courts of Small Causes beyond the local limits of the jurisdiction of the Supreme Courts of Judicature established by Royal Charter."

ADJUDICATION OF FORFEITURES.

MR. HARINGTON moved the second reading of the Bill "to provide for the adjudication of claims to property seized as forfeited."

The Motion was carried, and the Bill read a second time.

CATTLE TRESPASS.

MR. CURRIE moved the second reading of the Bill "to amend Act III of 1857 (relating to Trespasses by Cattle)."

The Motion was carried, and the Bill read a second time.

RAILWAY CONTRACTORS AND WORKMEN.

MR. LEGEYT moved the second reading of the Bill "to empower Ma-

gistrates to decide certain disputes between Contractors and Workmen engaged in Railway and other works."

MR. PEACOCK said, he thought it inconvenient to have many Bills on the same subject. There was a Bill which stood for consideration this day before a Committee of the whole Council "to provide for the punishment of breaches of contract by Artificers, Workmen, and Laborers in certain cases." The Honorable Member for Bombay was a Member of the Select Committee who had reported on that Bill. In that Report he found it stated as follows.—

"Mr. LeGeyt, while he does not object to the proposed extension (that is, the extension of the Bill to the Straits Settlement and other places), considers that the scope of the Bill is too restricted. Instead of confining its operation to the punishment of breaches of contract by Artificers, Workmen, and Laborers, who have received advances of money on account of their work, he would apply the penal provisions of the Bill to all breaches of contract of service, whatever may be the nature of the service or work contracted for; and he would make the Bill applicable to all such breaches of contract irrespective of any advance of money on account."

The reasons given for bringing forward the present Bill was that in a particular case a serious affray was committed and a European Contractor killed. They ought not to be induced by such an occurrence to alter the law.

Another reason was that there was no Moonsiff's Court within a reasonable distance. Such a reason was equally applicable in support of a law which would extend to all laborers and employers of laborers. If the Honorable Member thought, as had already been stated, that the other Bill did not go far enough, why did he not extend the scope of the present Bill?

He (Mr. Peacock) thought that the Bill carried the powers of Magistrates to a very great extent. Section V provided:—

"If any question shall arise whether any goods or chattels seized under the warrant of distress belong to the defaulter or are liable to be distrained and sold as aforesaid, the decision and order of the Magistrate shall be final and conclusive with respect thereto."

Not only the Magistrate, but any Deputy Magistrates or other person specially empowered by the Executive Government, might exercise these powers. Even the Civil Courts had no such final jurisdiction, and yet this Bill gave it to Magistrates. It might happen that valuable plant might be seized, which the Contractor had conveyed to the Railway Company to secure advances made to him.

The Clause to which he had alluded might be considered by the Select Committee to whom the Bill, if allowed to be read a second time, would be referred. But he would suggest to the Honorable Member that the best course would be to withdraw the Bill, and to appoint a Select Committee to consider the whole question.

MR. LEGEYT said, he certainly did not think that either of the Bills went far enough. But with reference to what had passed both as to the Bill brought in by the Honorable Member for Bengal, and to the petition and draft Act which came up from Madras in 1855, he saw little chance of succeeding to pass through the Council a comprehensive Bill relating to Masters and Servants. He therefore proposed to legislate on the subject only to the extent that the Bill now under discussion went. He had no doubt that the persons who were principally concerned in the disputes which had given rise to the present Bill, on the other side of India, were of a class to which Civil Courts were nearly virtually shut. With this view the Bombay Government had come to the conclusion that it would be advisable to withdraw these cases from the jurisdiction of the Civil Courts, and to place them under a Magistrate, with the power of deciding upon them summarily.

Had he referred this matter to the Select Committee on the Bill of the Honorable Member for Bengal, supposing even that the Select Committee should have been disposed to admit this enlargement of that Bill, it would have delayed its passing. No doubt so material an alteration as would have been introduced would have caused the Bill to be republished.

If, again, instead of bringing in this Bill, as desired by the Bombay Government, he had brought forward a general Bill regarding Masters and Servants, he had before him the opinion of the

Select Committee on the Penal Code, who submitted a special report on the subject, stating that legislation in the matter was not necessary. It was stated in that report :—

"Adopting, as we do, the principle that redress for breaches of contracts of service or other contracts ought in general to be sought by Civil action, and seeing that the Small Cause Courts established and intended to be established will greatly expedite the remedy in such cases, and bring it within the reach of all persons in the Territories of the East India Company with small trouble or expense, it is hardly necessary to say that we are opposed to the enactment of a law such as is proposed in the draft referred to us, which is founded upon the opposite principle of withdrawing all breaches of contracts of service from the jurisdiction of the Civil Courts, and dealing with them as crimes."

Under these circumstances, and finding himself to have been in a minority of one in the Select Committee, who had reported in 1855, and a dissentient in the Select Committee on the Bill introduced by the Honorable Member for Bengal, he did not see what possible advantage there would have been in postponing the present Bill.

With regard to Section V, to which the Honorable and learned Member had taken objection, he had no doubt that, if the Bill were allowed to be read a second time, and referred to a Select Committee, the point would be fully considered by the Committee. The object of the Clause in question was to enable the Magistrate to decide such cases as summarily as in his criminal capacity. The award would partake of the nature of a fine.

He did not know if he could say anything further in support or defence of the measure. He should have been most glad to bring in a comprehensive Bill, but with the opinions before him, to which he had referred, he did not see how he could do so with any hope of success.

The Motion was then put and carried, and the Bill read a second time.

LIMITATION OF SUITS.

The Order of the Day being read for the third reading of the Bill "to provide for the Limitation of Suits"—

MR. HARINGTON said, with the permission of the Council he would postpone his Motion for the third reading of this Bill until Saturday next. Some alterations would be necessary on the passing of the Bill relating to the recovery of rent, of which the Honorable Member for Bengal had charge; and he thought therefore that it would be better to stay further proceedings on this Bill for the present.

PILOT COURTS (BENGAL).

MR. CURRIE moved that the Council resolve itself into a Committee on the Bill "to make better provision for the trial of Pilots at the Presidency of Fort William in Bengal for breach of duty," and that the Committee be instructed to consider the Bill in the amended form in which the Select Committee had recommended it to be passed.

Agreed to.

Sections I to IX were passed as they stood.

Section X provided how the trial should proceed if any of the jurors did not attend.

SIR JAMES OUTRAM said, he had an alteration to propose in this Section. As the Section now stood, it admitted of the possibility of a juror refusing to serve, and it also contemplated the possibility, in the event of a juror being absent, of the Judge substituting another juror who might not be of the same profession or calling as the absent juror. He proposed to move certain alterations, therefore, the effect of which would be to leave it optional neither with the juror to serve, nor with the Judge to appoint a juror not of the same profession or calling as the absent juror. He accordingly moved, first, the insertion of the words "selected by the Judge from the same profession or calling as the person originally summoned and" after the word "person" in line 10.

After some conversation, the Motion was carried.

MR. CURRIE moved the omission of the words within parenthesis, namely, "whether he be a person mentioned in either of the said lists or not."

Agreed to.

SIR JAMES OUTRAM next moved the omission of the words "and who shall consent to serve" in line 13.

MR. PEACOCK thought that, if the name of a juror were suddenly called at the last moment to supply the place of an absent juror, the consent of the former ought to be given, or the [illegible] of trial postponed if he should be unable to attend on the day fixed.

SIR JAMES OUTRAM said, what he wished to prevent was the possibility of a juror refusing to serve. He might have reasons for being excused from serving, which the Judge might admit and release him accordingly; but he should not have the power of refusing to serve without his reasons being submitted to, and accepted by the Judge.

MR. GRANT said that service on these juries was already an unpalatable duty, and that the proposed amendment would make it more unpalatable. If a merchant had notice that he was to be summoned on a jury, he had an opportunity of making arrangements, which would make his service as little inconvenient as possible. But to be summoned suddenly, without having had such an opportunity, might be an excessive inconvenience to him, and perhaps a great loss.

The Motion was then put and negatived.

SIR JAMES OUTRAM moved the omission of the words "It shall be a valid objection to such person that he is not of the same profession or calling as the absent juror" at the end of the Section.

Agreed to.

MR. GRANT moved the omission of the words "whose attendance can forthwith be procured."

Agreed to

SIR JAMES OUTRAM moved the omission of the words "and to be nominated by the Judge."

The Motion was carried, and the Section as amended then passed.

Sections XI to XIV were passed as they stood.

Section XV was passed after a verbal amendment.

Sections XVI to XXIII and the Preamble and Title were passed as they stood; and the Council having resumed its sitting, the Bill was reported with amendments.

BREACHES OF CONTRACT BY ARTIFICERS, &c.

MR. CURRIE moved that the Council do resolve itself into a Committee on the Bill "to provide for the punishment of breaches of contract by Artificers, Workmen, and Laborers in certain cases;" and that the Committee be instructed to consider the Bill in the amended form in which the Select Committee had recommended it to be passed.

Agreed to.

Section I empowered the Magistrate to hear complaints against workmen neglecting to perform work on account of which they had received advances of money.

MR. LEGEYT said, he had an amendment to propose in this Section. He did not think that the scope of the Bill should be limited to those cases where an advance of money was given. He would extend it to all cases in which a contract for service was made. It did not necessarily follow that, because an artificer was employed, he would get an advance of money; and he (Mr. LeGeyt) did not see, if a workman neglected or refused to perform his contract, although he had received no advance, why the contractor should not be entitled to deduct a portion of his wages, or to have him punished summarily before a Magistrate. He therefore proposed to substitute the words "contracted with" for the words "received from" in lines 2 and 3.

MR. CURRIE said, it was very true, as the Honorable Mover of the amendment had said, that it did not follow that, because an artificer contracted to do work, he must get an advance of money. But that was in fact the invariable custom and practice of this country, and it was the existence and general prevalence of the practice which had led to the introduction of this Bill. If a person contracted to do work, and after receiving an advance of money wilfully failed to perform it, it was but reasonable to render him liable to punishment for his fraudulent conduct. He was not however prepared to admit that the same punishment should be inflicted for simple breach of contract, and he was not disposed to accede to the proposition of extending the

provisions of the Bill to persons who received no advances.

MR. HARINGTON said, the amendment proposed by the Honorable Member for Bombay, if carried, would greatly change the character of the Bill. If he rightly understood the Bill, the object chiefly aimed at in its introduction was the protection of the tradesmen at the Presidency Towns from pecuniary loss. It was the custom in those towns to make large advances for the performance of contract work, but the workmen who received these advances often failed to fulfil their engagements, and the only remedy now open to the tradesman for the recovery of the money was a Civil action, which was a tedious and expensive process. The Bill gave the Magistrate power to compel the refund of the money advanced, though he might, if he thought proper, order the party who had received the advance to perform the work contracted for. Generally, however, it would be found that this was not what the tradesman wished. There was little use in making a man work against his will. He should vote against the amendment.

MR. CURRIE said, this Bill was introduced at the instance of the Calcutta Trades Association, who had complained of the pecuniary loss to which they were subjected by the fraudulent conduct of their workmen in wilfully failing to perform work for which they had received advances. At the time of moving the first reading, he had mentioned that a memorandum had been put into his hand by some of the Petitioners, showing large advances outstanding to the amount of a lakh and a half of Rupees. The Bill was introduced to provide a remedy for this specific grievance, and he thought it very inconvenient that amendments like that now moved by the Honorable Member for Bombay, involving an alteration in the principle of the Bill as originally introduced, should be brought forward at this late stage.

MR. GRANT thought that the amendment would be going a great way. It was not even restricted to written contracts. A bare oral promise to do certain work seemed to him a vague and uncertain thing to found a criminal charge upon. It appeared to him that the Bill, as it stood, went far enough; and it went as far as the Council had been asked to go. He thought it contrary to sound principle to punish a [illegible] criminally for a simple breach of contract. When [illegible] man took an advance for doing certain work, and [illegible] without good cause refused to do it, there was a tinge of fraud in the transaction to justify its being criminally dealt with, as proposed by the Bill. But if he took no advance, fraud could scarcely be imputed to him, and he (Mr. Grant) thought it was rather severe to send a man to the House of Correction for three months, merely for refusing to work after he had consented to do so.

MR. LEGEYT said, it would appear that a law on the subject did now exist in England. He would read the following extract from a memorial from certain merchants and others of Malabar, dated so far back as 13th September 1854:—

"That there has, since the time of Queen Elizabeth, existed in England a summary jurisdiction, vested in the magistracy, for the speedy settlement of all such questions, not only a protection of the master against the servant, but of the servant against the master, a mutuality which your petitioners would of course cheerfully see introduced into this Presidency in any enactment which the Legislative Council may deem it advisable to pass."

In all military cantonments, which were the places where vast majorities of Europeans resided, such a law prevailed, for the Cantonment Magistrate had the power to enforce the performance of contract for service. He should therefore press his Motion.

The Council divided—

Ayes 2.	*Noes* 6.
Mr. LeGeyt.	Sir Charles Jackson.
Mr. Peacock.	Mr. Forbes.
	Mr. Harington.
	Mr. Currie.
	Mr. Ricketts.
	The Chairman.

So the Motion was negatived.

The Bill passed through Committee without amendment, and the Council having resumed its sitting, was reported.

SALES OF LAND FOR ARREARS OF REVENUE (BENGAL).

The Order of the Day being read for a Committee of the whole Council on the Bill "to improve the law relating to sales of land for arrears of Revenue in the Bengal Presidency"—

MR. GRANT said, as the printed Report of the Select Committee had been put into the hands of Honorable Members only last night, he proposed to postpone the Motion for a Committee of the whole Council upon it to the next Meeting of the Council. But as he was anxious that the Bill should be passed, if possible, on Saturday next, he would propose, at the proper time, that the Council at its rising should adjourn till Wednesday next.

SMALL CAUSE COURTS.

MR. HARINGTON gave notice that he would, on Saturday the 30th Instant, move for a Committee of the whole Council on the Bill "for the establishment of Courts of Small Causes beyond the local limits of the jurisdiction of the Supreme Courts of Judicature established by Royal Charter."

ADJUDICATION OF FORFEITURES.

MR. HARINGTON moved that the Bill "to provide for the adjudication of claims to property seized as forfeited" be referred to a Select Committee consisting of Mr. Peacock, Mr. LeGeyt, and the Mover.

Agreed to.

WARRANTS OF ATTORNEY AND COGNOVITS.

SIR CHARLES JACKSON gave notice that he would, on Saturday the 30th Instant, move the second reading of the Bill "to provide for the due execution of Warrants of Attorney to confess judgment and Cognovits."

MALABAR OUTRAGES.

MR. FORBES gave notice that he would, on the same day, move the first reading of a Bill "for the suppression of Outrages in the District of Malabar in the Presidency of Fort St. George."

RAILWAY AND OTHER WORKS.

MR. LEGEYT moved that the Bill "to c[illegible]tain disp[illegible]ower Magistrates to decide cer- Workmen eng[illegible] between Contractors and works" be refer[illegible] in Railway and other mittee consisting of [illegible] a Select Com- Harington, Mr. Forbes, [illegible] Peacock, Mr. [illegible]he Mover.

Agreed to.

ADJUDICATION OF FORFEITURES.

MR. HARINGTON moved that the Standing Orders be suspended to enable the Select Committee on the Bill "to provide for the adjudication of claims to property seized as forfeited" to present their Report on Saturday next, and in order that the Bill may then be passed through its subsequent stages. He said that the same reasons which had led to the introduction of the Bill, rendered it desirable that it should pass into law as soon as possible.

MR. FORBES seconded the Motion, which was then put and carried.

MR. HARINGTON moved that the Select Committee be instructed to present their Report to the Council on the above Bill on Saturday next.

Agreed to.

RECOVERY OF RENTS (BENGAL).

MR. PEACOCK delivered to the Clerk of the Council his dissent and his reasons of dissent from the passing of the Bill "to amend the law relating to the recovery of Rent in the Presidency of Fort William in Bengal."

SIR CHARLES JACKSON also proposed to deliver his dissent from the passing of the Bill.

MR. CURRIE said, he doubted if the dissent of the Honorable and learned Judge could be received, and he would like to have the opinion of the Council on the subject. When the Honorable and learned Member opposite (Mr. Peacock) gave notice of his intention to record his dissent, he had not the opportunity of referring to the Standing Orders. He was not aware at the time that he should have, under Standing Order No. XCI, given notice of his intention to record his assent at the Meeting when the Bill was passed. He observed that, while Standing Order No.

XCII allowed dissents "to be delivered before the expiration of the next ordinary Meeting after the passing of the Bill," Standing Order No. XCIII allowed assents "to be delivered before the expiration of the second ordinary Meeting after" the same. The object seemed obviously to have been to give to Members interest to answer the dissent. The passing of a Bill was prevented from recording his assent by an inadvertent omission, at the last Meeting, to give notice of his intention to do so, and if there were now any means of remedying the omission.

THE PRESIDENT said, that there could be no doubt upon the point of form. According to Standing Order No. XCI no dissent or assent to a Bill could be recorded, unless by a Member who had given notice of his intention so to do at the Meeting at which the Bill was passed. In point of form, therefore, the Honorable Member for Bengal having omitted to give such notice, was not entitled to record his assent. But it was within the competency of the Council to suspend the Standing Order referred to.

SIR CHARLES JACKSON said, he believed he stood in the same position as the Honorable Member for Bengal, as he had omitted to give notice of his intention to record his dissent.

THE PRESIDENT said, that the Honorable and learned Judge was precisely in the same position as the Honorable Member for Bengal. The Honorable and learned Member's (Mr. Peacock's) dissent might be read first, after which the Standing Orders might be suspended to enable other Honorable Members to record their dissent, or to give notice of their intention to record their assent before the rising of the next ordinary Meeting of the Council.

MR. PEACOCK'S dissent was then read by the Clerk as follows :—

Bill to amend the Law relating to the Recovery of Rent in the Presidency of Fort William in Bengal.

I DISSENT—

1*st.*—Because the Bill invests Collectors and other Revenue authorities with power to try the suits mentioned in Section XXIII, many of which will involve difficult questions, and are at present cognizable only by the Civil Courts of Judicature.

2*nd.*—Because it deprives the regular Courts of Civil Judicature of the jurisdiction which they now have to try any of the said suits, whereas such a measure is wholly uncalled for, and is especially inexpedient at a time when the procedure of the Civil Courts has just been rendered more simple and expeditious.

3*rd.*—Because the jurisdiction to be exercised by the Revenue Authorities having been restricted to Collectors, Assistant Collectors invested by Government with the powers of Deputy Collectors, and to Deputy Collectors who by an amendment carried by a vote of this Council cannot at the same time exercise Police functions, the only Officers now existing, who, if the Bill pass, will have jurisdiction to try the suits in question, are not sufficiently numerous to prevent the necessity of parties and witnesses in numerous cases being compelled to travel to long distances far greater than would be necessary if the Civil Courts were allowed to retain the jurisdiction which they now possess, and because it will be necessary, if the great evil above contemplated is to be avoided, either to appoint many more Deputy Collectors at a time when the finances of the country ought not to be burthened for such a purpose, or to deprive them of their Police functions, and to appoint as Deputy Collectors the Deputy Magistrates who have been lately appointed with the sanction of Government, not for the purpose of trying Civil suits, but for the purpose of exercising Magisterial functions, and continually moving about in their districts in order to superintend and control the Police.

4*th.*—Because if the finances of the country were in a state to justify a large expenditure for the purpose of providing such a number of Deputy Collectors as this Bill will render necessary, I am of opinion that such expenditure ought not to be incurred so long as the Uncovenanted Judges of the Civil Courts are so greatly underpaid as they are universally admitted to be.

5*th.*—Because if any of the Deputy Magistrates, who have lately been appointed at a great expense, can consistently with the proper control of the Police be deprived of their Police functions, in order that they may be appointed Deputy Collectors, and in that capacity empowered to try the suits in question they ought to be discontinued, and the expense of their salaries saved and devoted to, the increasing of the pay of the Uncovenanted Civil Judges, and to the improvement of the Civil Courts of Judicature.

6*th.*—Because there is no sufficient guarantee that the Deputy Collectors are qualified to try the suits in question, none of them having undergone a judicial training or examination.

7*th.*—Because if the Bill to improve the law relating to sales of land for arrears of Revenue be passed, the Collectors and other Revenue Authorities will have a considerable increase of business thrown upon them by that Bill, which will render their time less available for the trial of Civil suits.

8th.—Because, entertaining the opinion that the Revenue Authorities authorized to try suits under this Act are not at present sufficiently numerous for the proper discharge of the duty, I cannot blindly assent to oust the Civil Courts of their jurisdiction (even if I were otherwise disposed to do so) until I know how many Revenue Courts are intended to be created to supply their place.

9th.—Because Section XXXVIII of the Bill affects the stamp laws, and will, in my opinion, cause a considerable reduction in the Revenue derived from the suits in question: whereas there is no reason for placing such suits in a more favorable position as regards stamp duty than other suits now cognizable only by the Civil Courts.

10th.—Because, although the rate of duty is decreased in respect of suits for a large amount, the stamp duties on many of the suits where the value is under sixteen rupees, is doubled by increasing the same from four annas to eight annas, which burden will in most cases fall upon the poorer classes of ryots who are the least able to bear it.

11th.—Because if the finances of the country were in a position to bear the loss, stamp duties on legal proceedings ought to be abolished; but the Government having lately declared that they could not afford to forego stamp duties in the Civil Courts, there is no reason why any of the suits provided for by this Bill should, where the value exceeds sixteen rupees, be specially favored by the reduction of the stamp duties thereon, at a probable loss of Revenue of from a lakh to a lakh and a half, or two lakhs a year.

B. PEACOCK.

MR. GRANT moved the suspension of Standing Order No. XCI, in order to allow any other Member who wished to record his dissent to do so now.

SIR CHARLES JACKSON seconded the Motion, which was then put and agreed to.

SIR CHARLES JACKSON delivered to the Clerk of the Council his dissent and his reasons of dissent from the passing of the Bill.

SIR CHARLES JACKSON'S dissent was then read by the Clerk as follows:—

Bill to amend the Law relating to the Recovery of Rent in the Presidency of Fort William in Bengal.

I DISSENT—

1st.—Because the Bill deprives the regular Civil Courts of the jurisdiction which they now have to try suits between landlord and tenant—suits which may involve difficult questions of law and fact—and invests the Revenue Authorities with jurisdiction to try such suits.

2nd.—Because if it be true that the regular Courts have now too much to do, and the Revenue Authorities have not enough business, then the number of Judges should be increased, and the Revenue Authorities should be reduced in number.

3rd.—Because this Bill confounds the duties of one branch of the administration with the duties of another and independent branch thereof.

4th.—Because the provisions of this Act relating to the Officers before whom suits regarding rent are to be brought are founded on no principle, and are not shown to be grounded on convenience.

C. R. M. JACKSON.

MR. GRANT moved the suspension of the Standing Order No. XCI, in order to allow any Member, who now gave notice of his intention to record his assent, to do so before the rising of the next ordinary Meeting of the Council.

SIR CHARLES JACKSON seconded the Motion, which was then put and agreed to.

MESSRS. CURRIE AND GRANT severally gave notice of their intention to record their assent to the Bill.

MARKETS.

MR. CURRIE moved that the Bill "for regulating the establishment of Markets" be referred to a Select Committee consisting of Mr. Ricketts, Mr. Harington, and the Mover.

Agreed to.

CATTLE TRESPASS.

MR. CURRIE moved that the Bill "to amend Act III of 1857 (relating to Trespasses by Cattle)" be referred to a Select Committee consisting of Mr. LeGeyt, Mr. Harington, Mr. Forbes, and the Mover.

Agreed to.

LIABILITY OF LANDHOLDERS (BENGAL).

MR. CURRIE said, he mentioned last Saturday that there was on the list of Select Committees a Bill "to extend the provisions of Regulation VI. 1810 of the Bengal Code" on which his name only appeared. The Bill was brought in by the late Honorable Member for the North-Western Provinces, but had not been proceeded with, because it was supposed that the object for which it was intended would be provided for by the Penal Code. He understood, however, that the Penal Code would provide

penalties only for neglect of any duty which landholders were required by any law or Regulation to perform, whereas this Bill prescribed a new duty which was not imposed by any law at present in force.

The law relating to duties of landholders in cases of this kind was scattered over several Regulations. Regulation VI. 1810 imposed upon landholders the duty of reporting to the Police the resort within their estates of dacoits, cozauks, thugs, or budhecks, or of any other description of professional robbers. Regulation I. 1811 declared landholders accountable for the early communication of information to the Magistrate respecting the residence of notorious receivers or vendors of stolen property within their estates, and the penalty for not giving such information was contained in another Regulation which had been rescinded. So that, as the law stood, there was a prohibition without a penalty. Then in Regulation III. 1812 the same duty was imposed upon them with regard to the resort of criminals and the commission of robberies and burglaries; the same in Regulation VIII. 1814 with regard to other offences, such as murder, arson, and theft; and the same in Regulation III. 1821, regarding the resort to or passage through their villages of bodies of strangers subject to Foreign States. He thought it desirable that the whole should be considered and reviewed, and that whatever duties were imposed upon landholders in matters of this nature should be included in a single enactment. The Honorable Member for the North-Western Provinces had concurred in this view, and had promised to bring in a new Bill.

With this understanding, he proposed to discharge the Select Committee on this Bill instead of proposing to add other Members to it; he therefore moved that the Committee be discharged.

MR. HARINGTON said that he concurred with the Honorable Member for Bengal that it was not advisable to proceed with the present Bill, but that it would be better to bring in a new Bill, and to consolidate therein all the existing Laws and Regulations relating to the responsibilties of landholders in connection with Police matters, with such modifications and additions as might be deemed necessary. He proposed to bring in a Bill of this nature on an early date.

The Motion was carried.

PUNISHMENT OF CHOWKEYDARS.

MR. CURRIE said, there was in the list of Select Committees another Bill brought in by the late Member for the North-Western Provinces, in which only his name appeared, namely, the Bill "for the punishment of Chowkeydars for neglect of duty," which had also lain over, under the impression that it would be provided for by the Penal Code. It appeared, however, that that was not the case, for he had understood that the provision on the subject, which was contained in the Code, had been omitted. At the suggestion of the Honorable Member for the North-Western Provinces, he would now move that Mr. Ricketts and Mr. Harington be added to the Select Committee on that Bill.

Agreed to.

APPEALS.

MR. CURRIE gave notice that he would, on Saturday next, move the first reading of a Bill to provide for the more speedy disposal of Appeals.

The Council adjourned at 1 o'clock, on the Motion of Sir James Outram, till Wednesday, the 27th Instant.

Wednesday, April 27, 1859.

PRESENT:

The Honorable J. P. Grant, Senior Member of the Council of the Govr.-Genl., Presiding.

Hon. Lieut.-Genl. Sir J. Outram,	E. Currie, Esq.,
Hon. H. Ricketts,	H. B. Harington, Esq., and
Hon. B. Peacock,	H. Forbes, Esq.
P. W. LeGeyt, Esq.,	

RECOVERY OF RENT (BENGAL).

MR. CURRIE AND MR. GRANT severally delivered to the Clerk of the Council, for the purpose of being recorded, their assents and their reasons of assent to the Bill "to amend the law relating to the recovery of Rent in the Presidency of Fort William in Bengal."

THE CLERK reported to the Council, that Mr. Ricketts and Mr. Harington had affixed their signatures to Mr. Currie's assent, stating that they assented for all the reasons specified therein.

THE VICE-PRESIDENT said that, as both the Honorable Members had signed the assent without having given due notice of their intention so to do, he apprehended that the additional signatures could not be recorded without a suspension of the Standing Orders.

MR. CURRIE said, his impression was that, when an assent was recorded after notice given, no notice was necessary to enable other Honorable Members to affix their signatures thereto. But he would submit for decision the point of order.

THE VICE-PRESIDENT said that the same rule was applicable to both cases, and that, under the Standing Orders, the assents of the Honorable Members could not be recorded. He would move, however, that the Standing Orders be suspended in order that the assents might be recorded.

MR. PEACOCK seconded the Motion, which was carried.

MR. CURRIE'S assent was then read by the Clerk, as follows:—

Bill to amend the law relating to the recovery of Rent in the Presidency of Fort William in Bengal.

I assent to the Bill and think that it ought to pass into law.

1*st.*—Because the Bill defines and settles several important questions connected with the relative rights of landholders and tenants, which have remained undefined and unsettled from the commencement of legislation in this Presidency, and of which a definition and settlement have been long considered to be eminently desirable and necessary.

2*nd.*—Because, instead of two classes of Courts deciding cases of the same description under different forms of procedure, and for one of which no rules of procedure have ever been prescribed by law, the Bill gives the original jurisdiction to one class of Courts, and provides for the guidance of those Courts a complete and simple Code of Procedure suitable to the cases to be tried by them.

3*rd.*—Because the class of Courts to which exclusive original jurisdiction is thus given is not only the best qualified to try cases between landlord and tenant, but is also that in which four-fifths or five-sixths of the cases which, under the existing law, might be brought indifferently in either class of Courts, are now actually instituted and disposed of.

4*th.*—Because, although it is true that under the general law the said Courts (namely, the Collectors' and Deputy Collectors') have not jurisdiction in some of the several descriptions of cases enumerated in Section XXIII, yet it is in the power of the Executive Government to give them special jurisdiction in all those cases, and such jurisdiction has in fact been given to, and is now exercised by, the said Courts in all the Districts of the North-Western Provinces.

5*th.*—Because there is no reason to suppose that the Collectors and Deputy Collectors who have heretofore had the trial of rent suits, as stated under the third head of these reasons, will not be able to dispose of all cases brought before them under the provisions of this Bill.

6*th.*—Because, when the principle involved in the new Section, which was introduced by the Council into the Bill, is carried out (as it may be without any further legislation), and Officers exercising police functions are divested of all judicial powers, it will still be necessary that, in the large Districts of the Lower Provinces, there should be sub-divisions in charge of Deputy Magistrates for the trial of criminal cases, which was indeed the main object for which sub-divisions were first constituted; and if such Deputy Magistrates are also Deputy Collectors, as they are at present, the local Courts, which in those Provinces are undoubtedly necessary to give the people the full benefit of the provisions of this Bill, will be supplied without additional expense; some portion of the Officers already authorized being made Deputy Superintendents of Police, and the remainder being invested with the charge of sub-divisions.

7*th.*—Because the persons appointed to the Office of Deputy Collector, or Deputy Magistrate and Deputy Collector, are carefully selected, are required to pass the examinations prescribed for Junior Civil Servants, and are never placed in charge of sub-divisions until reported qualified by the Commissioner; and there is, therefore, every reason to believe that the said Officers are and will be sufficiently qualified to discharge the duties entrusted to them by this Bill.

8*th.*—Because that, in so far as this Bill affects the revenue derived from Stamps, the principle of allowing suits connected with demands and exactions of rent to be instituted on more favorable terms than other suits has already been recognized, and is a part of the existing law; and whatever extension of the principle is authorized by this Bill, applies principally to those descriptions of suits which may be instituted by the tenant to obtain redress for acts of oppression committed by the landlord.

9*th.*—Because I believe that the loss of stamp duty, which has been brought forward as an objection to the passing of this Bill, has been very greatly over-rated, probably (although there are no certain data on which to institute a calculation) in the proportion of two or perhaps three to one; and because any such argument would apply equally to many other measures for reforming

the administration of justice and especially to any measure for restricting the liberty of appeal.

10th.—Because the Bill greatly restricts, and at the same time imposes more effective checks on the power of distraint vested in landholders—a power which has been most grievously abused, and in respect of which remedial measures have been long and loudly called for.

11th and lastly.—Because the Bill collects into one comprehensive enactment, with large additions and extensive alterations, the whole of the existing law connected with the rent and occupancy of land—a law which is scattered through some twenty-five different enactments, extending over a period of more than sixty years.

E. CURRIE.

I assent for all the foregoing reasons.

H. B. HARINGTON.

I assent for all the foregoing reasons.

H. RICKETTS.

MR. GRANT'S assent was also read by the Clerk as follows :—

Bill to amend the Law relating to the Recovery of Rent in the Presidency of Fort William in Bengal.

I assent—

Because, although I am of opinion that the provision in this Bill, whereby the original jurisdiction of the Civil Courts in cases between landlord and tenant is wholly taken away, is bad for many of the reasons which have been assigned in the dissents recorded, nevertheless I am convinced that the Bill, taken as a whole, is an excellent work and, if it becomes law, will be an inestimable benefit to the agricultural community; and I would not reject an extensive and great and unquestioned improvement in an entire department of the law, only because upon one point, regarding which a great difference of opinion exists, a principle is adopted which seems to my judgment unsound. Practically, the great majority of cases to which this principle applies will not be affected by the change of law now introduced; and if in the minority of cases the change is found by experience to produce important bad consequences, the provision I object to can always be easily altered by a very short enactment. Allowing full weight to the objection, so far as it is a practical objection, the advantages of this measure appear to me decidedly preponderating.

I might have come to a different conclusion, if I agreed in all the practical objections to the provision I disapprove of, which have been recorded, founded upon the convenience of parties and the requirements of public economy. But to these objections, so far as the convenience of parties is concerned, I do not think great weight is to be attached; and so far as public economy is concerned, I think no weight is to be attached.

On the worst possible supposition, namely, the incapacitation of all Deputy Magistrates, being also Deputy Collectors, for the trial of rent suits by reason of their being all vested with functions of Executive Police, still even in this case the great majority of the parties to such suits will have the very same Officers stationed at the very same places to resort to, after this Bill becomes law, that they do in fact now resort to And effectively, it is not to be doubted that they will have many more, because it cannot be presumed that a district properly apportioned into sub-divisions, and adequately supplied over its whole extent with Deputy Magistrates, will require all or nearly all those Deputy Magistrates to be employed in the department of Executive Police. The true use of the greater number will be in the department of criminal justice, acting in which their presence throughout the district will remove the great opprobrium of the old system, which is the want, not of local Police Officers, but of local Judges. The employment of these sub-divisional Criminal Judges, in their capacity of Deputy Collectors, also in the trial of the classes of civil suits to which this Bill relates, will be entirely proper in itself, and entirely consistent with the objects of their appointment. And though I wish that the Moonsiffs' Courts also had been left open to this class of suitors, yet, as in fact the Moonsiffs' Courts try now only a small minority of these cases, I cannot deny that, when the arrangements in prospect are completed, the practical effect of this Bill will be to bring the trials nearer than they are at present to the doors of most of the parties and most of the witnesses concerned.

Nor will the reservation of some Deputy Magistrates for the peculiar functions of Executive Police, to be exercised over the Police Darogahs and under the Magistrates, involve the necessity of employing more of them on the whole than would otherwise be required, because in any way all will have full employment in one sort of business or another. Where the business of all sorts to be done remains the same, no increase of workmen is required, by reason of a division of labor, arranged upon sound principles, and giving full occupation to every workman engaged.

J. P. GRANT.

SALE OF LANDS FOR ARREARS OF REVENUE (BENGAL).

MR. GRANT moved that the Council resolve itself into a Committee on the Bill " to improve the law relating to sales of land for arrears of revenue in the Bengal Presidency;" and that the Committee be instructed to consider the Bill in the amended form in which the Select Committee had recommended it to be passed.

Agreed to.

Sections I to IX were passed as they stood.

Sections X and XI were passed after verbal amendments.

Section XII was passed after a trifling amendment.

Section XIII provided for the sale of separate shares.

MR. CURRIE said that Section III, which was one of the Sections taken from the old law, spoke of "the Collector *or other Officer duly authorized to hold sales under this Act;*" and in all the other old Sections, whenever the Collector was mentioned as holding sales, the expression used was "the Collector *or other Officer as aforesaid.*" In the new Sections, the latter words appeared to have been inadvertently omitted. He now begged to move the insertion of those words in line 6 of this Section.

The Motion was carried, and the Section passed after a further verbal amendment.

Section XIV was passed after amendments.

Sections XV and XVI were passed as they stood.

Sections XVII to XX were passed after verbal amendments.

Section XXI was passed as it stood.

Section XXII was passed after a verbal amendment.

Section XXIII provided for full payment of purchase money, &c.

MR. CURRIE said that this Section, which was taken from the old law, was incorrect, inasmuch as it provided that, in case of repeated default, the difference between the sum bid by each defaulting bidder and the actual sale price should be levied and credited to the former proprietor, whereas all that he was entitled to was the difference between the highest bid and the actual sale price. This had been pointed out before, when a Bill brought in by him for the sale of Under-tenures was before a Committee of the whole Council. He now begged to move amendments similar to those which it had been proposed to make in that Bill, namely, that the words "then and afterwards as often as such default shall occur" be omitted in line 11, and that all the last part of the Section, commencing with the words "it shall be so levied" in line 24 be also omitted, and the following words and new Section substituted for them :—

"Such difference shall be taken and considered to be a part of the purchase money, and shall be dealt with in the manner hereinafter prescribed for the disposal thereof.

"When default is made in the payment of purchase money, a notification of the intended re-sale shall be published for the period and in the manner prescribed in Section VI of this Act; but such notification shall not be published until the expiration of three clear days after the day on which the default shall have occurred; and if payment or tender of payment of the arrear on account of which the estate or share was first sold, and of any arrear which may have subsequently become due, shall be made by or on behalf of the proprietor of the estate or share before sunset of the third day, the issue of the notification of re-sale shall be stayed. The rules contained in the last preceding Section shall be applicable to every such re-sale. Provided that, if default of payment of purchase money shall occur more than once, the amount to be recovered from the defaulting bidders shall be the difference between the highest bid and the proceeds of the sale eventually consummated, which amount may be levied in manner aforesaid from any of the defaulting bidders to the extent of the amount by which his bid exceeds the amount realized."

The Motions were agreed to.

Section XXIV was passed after a verbal amendment.

Section XXV was passed as it stood.

Sections XXVI to XXVIII were passed after verbal amendments.

Section XXXI was ordered to be transposed, so as to stand after Section XXVIII as part of the Bill.

Section XXIX was passed after a verbal amendment.

Sections XXX to XXXIX were passed as they stood.

Section XL prescribed the procedure to be followed on application for common registry.

MR. CURRIE, in accordance with a suggestion of the Board of Revenue, Lower Provinces, moved the insertion of the words "or the authorized agent of such proprietor or proprietors" after the word "situated" in line 5.

Agreed to.

MR. CURRIE then moved the amendments of which he had given notice. He said that the object of the proposed amendments was to prevent registry being defeated by spite or enmity, when there was no real cause of objection.

The Motions were severally carried, and the Section as amended then passed.

Section XLI was passed after similar amendments to those last made in the preceding Section.

Section XLII was passed as it stood.

Section XLIII was passed after amendments.

Section XLIV was passed as it stood.

Sections XLV and XLVI were passed after verbal amendments.

Section XLVII was passed as it stood.

Section XLVIII related to the proceedings of Revenue Authorities under the Act.

After a verbal amendment on the Motion of Mr. Currie—

MR. RICKETTS said, he had an amendment to propose in this Section. One of the objects of the Bill was to give capitalists holding Talooks encouragement to lay out their money and improve their estates. Under this Section, however, a party who had succeeded in obtaining special registry of a tenure would be unable with any confidence to lay out capital upon it for at least ten years, for the Section said—

"The order of a Commissioner for the special registry of a tenure under the provisions of this Act shall be open at any time within ten years from the date of registry to revision by the Board of Revenue and the local Government, on the ground of the Government Revenue not having been sufficiently secured, or of the invalidity of the tenure, as the case may be."

He knew it to be very unlikely that either the Board of Revenue or the Government would interfere without very good cause having been shown. But still the provision above quoted was calculated to make capitalists uneasy, while the object was to give them confidence. It had been suggested to him to limit the period to three years, but one year appeared to him quite sufficient. If a very great fraud were committed, a special Act could easily be brought in for the purpose of remedying it. Even that would be better than to keep all improvers in a state of suspense for the long period of ten years. He should therefore move the substitution of the words "one year" for the words "ten years."

MR GRANT said, he entirely agreed in what had fallen from the Honorable Member who had just spoken. He thought it would be readily admitted that one year was a quite sufficient period within which the order of a Commissioner for the special registry of a tenure should be open to revision. The next Section provided for the case of frauds. If it could be proved that Government had been defrauded at any time up to sixty years, the order of registry could, under the latter Section, be set aside by a decree of a Civil Court pronouncing the registration to have been obtained by fraud. But the present Section provided for cases in which fraud could not be proved before a Civil Court, and he thought that one year was quite sufficient for the revision of orders in such cases.

MR. CURRIE said, he did not rise to oppose the amendment, but he thought they should be very careful not to imperil the Government revenue. It appeared to him that the privilege of special registration must to some extent put the Government revenue in peril, and that very great care would be required on the part of Collectors and Commissioners to guard against fraud. The provision under consideration was intended as a remedy in cases of concealed fraud, and he doubted whether the power of revision reserved to the Board, if limited to the short period of one year from the date of registry, would be of much value. The provision objected to was taken from the Butwarrah Law, which allowed the Board to set aside a Butwarrah, if it were discovered within a period of ten years that the apportionment of the revenue upon the several shares had been improperly made. This was considered necessary for the protection of the revenue, and for similar reasons the period of ten years was here introduced. For his own part, he preferred the Section as it stood; but as the amendment seemed to find favor with the Council, he would not oppose it.

The Motion was carried, and the Section as amended then passed.

Section XLIX provided as follows:—

"Entry in the special register shall be an effectual protection of the tenure or farm so registered, unless within sixty years from the date of registry a decree be passed at the suit of Government by a Civil Court, pronouncing the registration to have been obtained be

fraud, to the injury of the Government revenue."

After some discussion as to the effect of allowing a period of sixty years, during which Government might obtain a decree for fraudulent registration—

MR. GRANT moved the substitution of the following words for the words "within sixty years from the date of registry":—

"In a suit instituted by Government in a Civil Court within the period allowed for suits for the recovery of the public revenue a decree be passed."

Agreed to.

MR. PEACOCK moved the addition of the following proviso to the Section:—

"Provided that a tenure or farm in the hands of a *bonâ fide* purchaser for value shall not be avoided by reason of such fraud. But the tenure or farm shall be liable to such amount of rent as would have been fair and equitable at the time of the special registry thereof: such amount to be fixed by the Collector."

The Motion was carried, and the Section as amended then passed.

Section L was passed after a verbal amendment.

Section LI was a misprint.

Section LII was passed after a verbal amendment.

Sections LIII to LV were passed as they stood.

Section LVI was passed after verbal amendments.

Section LVII was passed as it stood.

Sections LVIII to LX were passed after verbal amendments.

Section LXI was passed as it stood.

Section LXII provided for the application and commencement of the Act.

MR. CURRIE said, he had referred to the Board of Revenue as to the time when the operation of the Act should commence, and they were of opinion that it might take effect at once. No preparations at all were required for the purpose, as with regard to the sale provisions the Act scarcely did more than re-enact the old law, and it would be some time before applications for separation of shares and registration of tenures began to come in. He thought it objectionable that this Act should take effect from the same date (1st August 1859) as the Rents Act, since both would require careful consideration and study by the Officers who would have to work them. He would therefore move to omit the words at the end of the Section "and this Act shall commence to have effect on the 1st of August 1859." The effect of the amendment would be that the operation of the Act would commence immediately.

MR. RICKETTS could not approve the proposed amendment; he considered that on such occasions it was very desirable to give Revenue Officers a little time to study the new enactment.

MR. HARINGTON said, he saw no necessity for postponing the date from which the Bill should take effect, simply in order that the Officers upon whom would devolve the duty of administering the law should have time to make themselves acquainted with its provisions. Few Officers would sit down merely to study the law. It was in the actual working of the Bill that its details would be mastered. The part of the Bill which related to the sale of land for arrears of Government revenue did not differ very materially from the law now in force, and nothing could be done under the other portions of the Bill without a written application, on the receipt of which the Collector would of course refer to the Bill to ascertain how he was to proceed, and he would act accordingly.

The Motion was carried, and the Section as amended then passed.

Schedule A was passed as it stood.

Schedule B was passed after verbal amendments.

The Preamble and Title were passed as they stood; and the Council having resumed its sitting, the Bill was reported with amendments.

MUNICIPAL ASSESSMENT (BOMBAY).

MR. LEGEYT moved that a communication received by him from the Bombay Government be laid upon the table and referred to the Select Committee on the Bill "to amend Act XXV of 1858 (for appointing Municipal Commissioners and for raising a Fund

for Municipal purposes in the Town of Bombay)."

Agreed to.

NATIVE PASSENGER VESSELS (BAY OF BENGAL).

MR. FORBES said, in November of last year, a Select Committee was appointed to take into consideration an extract from proceedings in the Foreign Department, respecting the evasion of the provisions of Act I of 1857 (to prevent the over-crowding of vessels carrying native passengers in the Bay of Bengal), by vessels clearing out from Foreign Ports within the Coast limits of the Madras Presidency and from Ports in other Presidencies. The Act provided that a fine should be levied from the owners and commanders of vessels who took more passengers than in the proportion of one to every four tons of burden from the Coast to places on the Eastern side of the Bay of Bengal. But it did not provide for the over-crowding of vessels coming from Foreign Ports, and the consequence was that several ships had arrived from the French Indian Ports with a larger proportion of passengers than was allowed by the law referred to; and as disease was very likely to break out in these over-crowded ships, there was great danger of its being introduced into the British Settlements in which the passengers might be landed. The question was referred by him to the Government of Madras, who had informed him that "His Excellency the Governor of the French Settlements in India, on a reference made to him on the subject of over-crowded vessels clearing out from French Indian Ports, has shown that the matter had already received his attention, and has assured the Government that he will take measures for the prevention of the practice."

The Act itself would expire with the present year, and if it should be considered necessary to re-enact it, opportunity might then be taken to consider whether provision should be made for including vessels clearing from Foreign Ports and arriving at Ports within the British Territories, among those to which its provisions should apply. In the meantime, however, the Council might suspend legislation in the matter, resting satisfied with the asssurance of His Excellency the Governor of the French Settlements that measures would be adopted for the prevention of the evil that had been complained of. He should therefore move that the Select Committee be discharged.

Agreed to.

RECOVERY OF RENTS (BENGAL).

MR. CURRIE moved that Mr. Ricketts be requested to take the Bill "to amend the law relating to the recovery of Rent in the Presidency of Fort William in Bengal" to the Governor-General for his assent.

Agreed to.

POLICE ACT (PRESIDENCY TOWNS AND STRAITS SETTLEMENT).

MR. CURRIE said, he had received a communication from the Bengal Government, enclosing a letter from Mr. Wray, relative to a supposed defect in the Police Act XIII of 1856, which provided no punishment for the sale of female children for immoral purposes by parents or others having charge of them. Section XLIV of the Act made it a penal act for any person to take, entice, or detain a female child under fourteen out of the possession, custody, or protection, and against the will of the husband, parent, or other person having lawful charge of the child for the purpose of prostitution; but it seemed doubtful whether the Act would reach a person taking such child with the will of the husband, parent, or guardian, and it certainly did not apply to the parent or guardian or other person in lawful charge who sold the child or consented to the unlawful taking. He begged to move that the above communication be laid upon the table and referred to the Select Committee on the Bill "to amend Act XIII of 1856 (for regulating the Police of the towns of Calcutta, Madras, and Bombay and the several Stations of the Settlement of Prince of Wales' Island, Singapore, and Malacca)"

Agreed to.

SALE OF LANDS FOR ARREARS OF REVENUE (BENGAL).

MR. GRANT gave notice that he would, on Saturday next, move the third reading of the Bill "to improve the law relating to sales of land for arrears of Revenue in the Bengal Presidency."

The Council adjourned.

Saturday, April 30, 1859.

PRESENT:

The Hon'ble J. P. Grant, Senior Member of the Council of the Govr.-Genl., Presiding.

Hon. Lieut.-Genl. Sir James Outram,
Hon. H. Ricketts,
Hon. B. Peacock,
P. W. LeGeyt, Esq.,
E. Currie, Esq.,
H. B. Harington, Esq.,
H. Forbes, Esq.,
and
Hon. Sir C. R. M. Jackson.

BRITISH SUBJECTS.

THE CLERK reported to the Council that he had received from the Home Department a copy of a Despatch from the Secretary of State for India, relative to the rights of British subjects not in the service of Her Majesty to enter the territories under her dominion and those under the rule of the Native Princes of India.

MR. GRANT moved that this communication be printed.

Agreed to.

LAND CUSTOMS (MADRAS AND BOMBAY).

MR. PEACOCK presented the Report of the Select Committee on the Bill "to alter the rates of Duty on goods imported or exported by land from certain Foreign Territories into or from the Presidencies of Madras and Bombay respectively."

ADJUDICATION OF FORFEITURES.

MR. HARINGTON presented the Report of the Select Committee on the Bill "to provide for the adjudication of claims to property seized as forfeited."

MR. HARINGTON then moved that the Council resolve itself into a Committee on the Bill, and that the Committee be instructed to consider the Bill in the amended form in which the Select Committee had recommended it to be passed.

Agreed to.

The Bill passed through Committee without any amendment, and, the Council having resumed its sitting, was reported.

MR. HARINGTON moved that the Bill be read a third time and passed.

The Motion was carried, and the Bill read a third time.

MR. HARINGTON moved that Sir James Outram be requested to take the Bill to the Governor-General for his assent.

Agreed to.

CRIMINAL PROCEDURE.

MR. CURRIE presented a joint Report from the Select Committees on the Bills for extending the jurisdiction of the Courts of Criminal Judicature, for simplifying the Procedure thereof, and for investing other Courts with Criminal jurisdiction.

MR. LEGEYT said, he had signed the Report because he assented to the general principle of the alterations in the Bill proposed by the Select Committee. But there were some points on which he differed in opinion with the majority of the Committee, and he therefore reserved to himself the right of proposing amendments in the Bill when it should come before a Committee of the whole Council.

NABOB OF SURAT.

MR. LEGEYT presented the Report of the Select Committee on the Bill "to amend Act XVIII of 1848 (for the Administration of the Estate of the late Nabob of Surat, and to continue privileges to his family)."

MALABAR OUTRAGES.

MR. FORBES moved the first reading of a Bill "for the suppression of Outrages in the District of Malabar, in the Presidency of Fort Saint George." He said, although the Bill, of which he was about to move the first reading, was mainly only to continue laws already in force, he should, in introducing it, trespass for a short time on the attention of the Council, partly because some Honorable Gentlemen now present were not Members of

this Council when the Acts to which he referred were passed, and partly because the earlier and more important of them was transferred to this Council on its first establishment in 1854, and, as far as he could learn from a reference to its printed proceedings for the time, was not introduced with any lengthened explanation of its purport.

The Moplas of Malabar were a race of Mahomedans active in their worldly calling, energetic in the pursuit of gain, thriving, and increasing in wealth and number; but they had always been over-bearing and intolerant, had hesitated at no violence in endeavoring to obtain their ends, and for many years past had been but too notorious for the perpetration of outrages of the most atrocious character. Prior to 1841 these outrages were the work of single fanatics, without aid or open sympathy from others; but since that year, bodies of Moplas had, in open day, attacked Hindoos of wealth and respectability, murdered them under circumstances the most horrible, burnt their houses or given them up to pillage, desecrated Hindoo temples, and had wound up their crimes by throwing away their lives in desperate resistance to the Police and the Military. These outrages had gradually become more sanguinary and more difficult of repression; greater numbers had joined in them; it had become necessary to employ larger bodies of troops, and to call in the aid of European Soldiers, when in the beginning of 1852, an outrage occurred in all respects more deplorable and formidable than any that had preceded it; men, women, and children were indiscriminately slaughtered, and the Government determined, at the recommendation of the Magistrate, the late Mr. Conolly, to appoint a Commissioner to investigate and report upon the causes of these outbreaks, and to advise the Government upon the means to be adopted for their repression.

Before he proceeded to state the result of the enquiry then held, he would give a short abstract of one or two cases of outrage, in order that the Council might clearly know the kind of crime with which they were now requested to deal.

In 1849 a party of Moplas attacked the residence of a Hindoo of high rank and importance, and seized possession of his temple situated on a commanding Hill; they numbered in all sixty-six, and held out for a period of nine days. Troops were at an early period sent against them, but the few who ventured into action were repulsed with the loss of an officer and five men. They killed several persons with cold-blooded atrocity, and holding out to the last in the hope of winning the crown of martyrdom by dying in action against those whom they considered unbelievers, were finally destroyed by a Company of European Soldiers.

In 1851 a case occurred in which the victims were mostly men of note. Four, with a servant, fell in one neighborhood, after which the criminals walked off about eight miles, and invaded the house of a man of eighty years of age, of large possessions and much consideration. He was brutally dragged out, and his body cut to pieces in the presence of his affrighted tenants. The criminals eventually amounted to nineteen; they held out for three days, repulsed a detachment of Native Infantry, but were destroyed by a party of Europeans, four of whom were killed.

In 1852 fifteen Moplas forced their way into the house of an influential landlord, butchered the whole of the inmates, consisting of fifteen persons, including women and children, and even an infant of six months, and then plundered and burnt the house, an unusually large and substantial one; they then went from place to place, burning, killing, and wounding, and finally attacked the house of another large proprietor, by whose retainers, after a contest sustained for three quarters of an hour, they were despatched.

Such was the nature of the outbreaks, into the cause of which the Government, in 1852, ordered that special enquiry should be made. The result of that enquiry was a report, in which it was stated that in about ten years prior to 1852 there had been sixteen actual outbreaks, by Moplas, in which murder had been committed or attempted. In these sixteen outbreaks forty victims were killed and sixteen wounded, most of them desperately, and always with intent to kill; sixteen others were sought for but escaped: seventeen of those killed were Brahmins, of whom

twelve perished in one house; eleven houses were burnt down, six pagodas partially destroyed, and six others injured and desecrated. The Commissioner made an elaborate enquiry, with the view of ascertaining what had led to these disastrous occurrences, and after avowing his entire disbelief of the existence of any oppression or wrong or injustice suffered by the Moplas at the hands of the Hindoos, he declared his opinion that the true incentive to them had been the most decided fanaticism. The victims or intended victims had been all Hindoos, and their slayers or intended slayers all Moplas, who had carried out their purposes with the avowed object of seeking death in arms against those whom they considered unbelievers, with the view of obtaining the joys of their fancied Paradise.

The close unity of the Moplas in all that concerned their religion, and the jealousy and hatred of the Hindoos, which were common to them, led to the greatest sympathy when any fanatical outrage was committed. One Mopla would not betray another in matters wherein the honor or advantage of his caste was concerned, and the destruction of the criminals engaged in outrage had no deterring effect, because their crime, in lieu of causing shame, brought only glory.

These were the circumstances under which Act XXIII of 1854 was passed by the Council. Its main provisions were for the forfeiture to the State of all the property that belonged to every Mopla convicted of, or killed in the commission of, a fanatical outrage, and for the burning of their bodies within the precincts of the Jail, and also for the levy, from the inhabitants of the Parish to which the perpetrator of an outrage belonged, or within which he had resided shortly before his crime, of a fine of such an amount as the Government might sanction, to be applied in the first instance to the relief of any who might have suffered in the outrage, the balance being carried to the credit of the State.

Since that Act was passed there had been but one crime such as those against which the law was pointed, and that was the murder, in 1855, of the Collector and Magistrate, Mr. Conolly, in revenge for his having been instrumental in deporting the Mopla High Priest, who had been found strongly to incite his disciples to outrage, to encourage them in crimes, and to give his sanction to and blessing on their perpetration.

On the occurrence of this murder the Act was at once enforced. The murderers, who, as usual, would not be taken alive, were shot, their bodies were burnt in the Jail, their property was confiscated, and heavy fines were collected from the inhabitants of their villages, and, although there was nothing in all this to compensate for the death of a most exemplary man and a most able public servant, one who, while still a Collector and Magistrate in the Provinces, had been nominated to a seat in the Government, the last of a band of brothers who all but one met a violent death—and nearly all met death in the service of their country—still it was some consolation to Mr. Conolly's many friends, and he (Mr. Forbes) for one should always be proud to have been among their number, to feel that sudden death could have come to no one better prepared to meet it; it was also some satisfaction to know that the law, once energetically enforced, had not again been broken, and that means had been found to crush the spirit of fanaticism which so long filled the Province of Malabar with dread.

It was provided in Act XXIII of 1854 that it should not come into operation until the Government had proclaimed that any part of the District of Malabar was to be subject to its provisions, and as this proclamation had not been made at the time of Mr. Conolly's murder, a difficulty arose in applying the new law to that particular crime. It was shown, however, that although the required proclamation had not been issued, the Act itself had been very carefully promulgated immediately on its enactment, and that the whole population were under the full impression that the law was actually in force. As it was felt to be intolerable that so great a crime should not meet its full meed of punishment on account of a mere technicality, and that a law passed to repress these fanatical outrages should, on no real or substantial ground, be ineffectual, on the very first occasion of a necessity for its action

arising, this Council passed Act V of 1856, by which the former law was brought into operation from a date subsequent to its full and general promulgation, but prior to Mr. Conolly's death.

These Acts would expire with the present year, and it was the object of the Bill which he had now to introduce to continue them in force. The spirit of fanaticism which called them forth had not died out, it was but suppressed by the stringency of these laws, which were now, and which would be for many years to come, as essential to the peace of society as they were when first passed. All the local Officers were agreed upon the absolute necessity for the continuance of the present law, and he thought that in the few remarks that he had made, and in the papers which he should print with the Bill, the Council would find sufficient to warrant the measure which he proposed.

It had appeared to him better to repeal Acts XXIII of 1854 and V of 1856, and to re-enact their provisions in a new law, than to pass an Act to continue those Acts, and thus have three laws all upon the same subject. He had therefore followed this course in drawing the present Bill, and he had made one or two alterations in the provisions of the former Act, to which he would briefly refer.

Section II of Act XXIII of 1854 provided for the forfeiture of the property of any one convicted of an outrage, or killed in the perpetration of one; and as it was very clearly established by all the enquiry made that these outrages had been deliberately planned some time previous to their perpetration, he had thought that it was not well that those intending to commit crime should be left with power to defeat the law by an alienation of their property. He had therefore inserted, after the Section declaring forfeiture, a Section taken from Section IV of Act XXV of 1857, declaring void alienations made within twelve months previous to the perpetration of a fanatical outrage by a Mopla.

In Section VII of the old law he had made an alteration, by which he proposed to extend to the Parish wherein a fanatical crime might be perpetrated the same liability to fine to which the Parish was liable in which the criminal might reside. To justify this addition to the stringency of the laws, he needed only to quote what is written by the Session Judge of Tellicherry.

"In the case of the sanguinary outbreak which took place in 1852, in which a substantial landholder and his entire family, fifteen persons in all, were murdered in one night, the perpetrators came from a distance, but it was well established that the murder was committed with the perfect knowledge and consent of the Mopla community generally, in the neighborhood where the crime was perpetrated, and some of them were, in fact, convicted and sentenced to lengthened terms of imprisonment as accessories."

Lastly, he had inserted a Section to make it lawful for the Magistrate to call upon the inhabitants of the Parish to which a fanatic might belong, in which he might reside, or to which, after the perpetration of a crime, he might flee, to deliver up such perpetrator, and on their failing to comply with the call so made, to assess a fine upon them in the same manner and for the same purpose as he might already fine those who, residing in the same village as the criminal, were assumed to have been cognizant of his intention to commit a crime. This provision was recommended by the Magistrate on the suggestion of a Mopla of consideration, well acquainted with his co-religionists, and well aware of what would best repress their unfortunate tendency to crime.

He had only further to say that he had not considered it expedient to fix any limit to the duration of this Act. The Legislature could at any time repeal any law which it might consider injurious. It was but too probable that a whole generation must pass away before the necessity for this law would have ceased in Malabar, and it appeared to him to be injudicious to arouse ill-feelings which might otherwise die out, by the frequent public discussion of the means to be adopted to repress them.

With these remarks he begged to move the first reading of the Bill.

The Bill was read a first time.

APPEALS.

MR. CURRIE moved the first reading of a Bill "to provide for the mo speedy disposal of appeals in cases appealable to the Sudder Court and of applications for special appeals."

He said, the object of this Bill was to afford such relief to the Sudder Court as would enable it to dispose of the business coming before it without an increase of the number of Judges. It was introduced at the instance of the Bengal Government in accordance with a suggestion of the Supreme Government.

The great pressure of work in the Sudder Court was in the department of regular appeals. The present arrear of cases being more than the Court, at its present rate of working, could dispose of in two years, and as the institutions outnumber the decisions, the arrears would go on increasing.

The law, as it now stood, required that appeals in all suits of an amount or value exceeding five thousand Rupees should be preferred to the Sudder Court. The manner in which this limit of five thousand Rupees had been fixed was this. Formerly Principal Sudder Ameens could not try cases of an amount exceeding five thousand Rupees, and all their decisions were appealable to the Zillah Judge. In 1837 this restriction was removed, and they were empowered to try cases to any amount, but it was provided that in cases above five thousand Rupees the appeal should lie to the Sudder Court. There seemed to him to be now no cogent reason for maintaining the limit of five thousand Rupees; there was a reason why it should not exceed ten thousand Rupees, because in cases above that amount the appeal lay to the Privy Council. The Sudder Court, whom he had consulted on the subject, proposed that the limit should be ten thousand Rupees, and a similar suggestion was made by his Honorable friend opposite (Mr. Harington) when Judge of the Sudder Court at Agra in 1852, at a time when the Court seemed to have been much pressed with work. The first provision therefore of the Bill which he now introduced was that appeals in all suits decided by a Principal Sudder Ameen, not exceeding ten thousand Rupees in amount or value, should lie to the Zillah Judge. This would give a very considerable amount of relief, as more than half, he believed nearly three-fifths, of the appeals preferred annually to the Sudder Court related to suits in which the amount or value was below ten thousand Rupees.

The number of applications for special appeals, too, was very large, and it had increased much of late years. As the law now stood, a single Judge of the Sudder Court could admit a special appeal, but two concurrent voices were necessary to reject an application for special appeal. The fact was that about four-fifths of the applications were rejected, and it was therefore usual for two Judges to sit together for the disposal of these cases. Now it hardly seemed necessary for the time of two Judges to be thus occupied; the rejection of an application implied a concurrence on the part of the Appellate Court with the view taken by the Lower Court of the part in which the appeal was preferred, and for such concurrence the decision of a single Judge might be deemed sufficient.

The Court said—

> "Two Judges therefore ordinarily sit together to hear these applications, three-fourths of which are rejected for want of merits, and the Court believe that a difference of opinion, whereby one Judge would admit and the other reject, is of the rarest occurrence. The Court believe that the ends of justice would be amply met if these petitions now on the file were allowed to be determined by a single Judge. This would just double the ability of the Court to deal with these applications, and would enable the Court with seven Judges to provide for the disposal of these cases, while two benches of three Judges were also sitting."

The second provision of the Bill therefore was that all applications for Special Appeals might be heard and admitted or rejected by a single Judge of the Sudder Court. This latter would of course be only a temporary measure, and would have no effect in respect of Special Appeals to be preferred under the rules contained in the new Code of Civil Procedure.

According to that Code all Special Appeals were to be filed in the Sudder Court, and disposed of by a Bench of three Judges. It was expected that under those rules the number of

appeals and the proportion of rejections would be very much smaller than at present.

These, therefore, were the two modes in which he proposed to grant relief to the Sudder Court, namely, by allowing all appeals under ten thousand Rupees to lie to the Zillah Judge, and by allowing a single Judge to hear and dispose of applications for Special Appeals.

The Sudder Court had suggested an alteration of practice regarding some descriptions of cases on the Criminal side of the Court. But the relief which could be given by any such alterations would be inconsiderable; and in the prospect of the speedy passing of a new Code of Criminal Procedure, he did not think it advisable to adopt them.

He begged to add that he proposed to suspend the Standing Orders, with a view to the Bill being read a second time, and referred to a Select Committee to-day.

The Bill was read a first time.

MR. CURRIE moved the suspension of the Standing Orders, to enable the Bill to be read a second time.

MR. HARINGTON seconded the Motion, which was carried.

MR. CURRIE moved the second reading of the Bill.

MR. HARINGTON said, he did not rise for the purpose of offering any opposition to the Motion of the Honorable Member for Bengal for the second reading of the Bill which had just been brought in by him; but in reference to that part of the Bill, which related to the disposal of applications for the admission of Special Appeals, he wished to observe that, as under Section 387 of the new Code of Civil Procedure, which would come into operation in the Presidency of Bengal on the 1st July next, all applications for the admission of Special Appeals which were pending on that date on the files of the Sudder Courts at Calcutta and Agra would have to be disposed of according to the rules of the new Code, which differed materially from the rule proposed in the Bill of the Honorable Member for Bengal, it seemed hardly worth while to make any alteration in the existing law for the brief period that would intervene before the date from which the new Code of Civil Procedure was to take effect. If he (Mr Harington) had rightly construed the Section of the Code of Civil Procedure to which he had referred, the relief which would be afforded to the Sudder Court at Calcutta from the operation of that part of the Bill brought in by the Honorable Member for Bengal, which declared that applications for the admission of Special Appeals might be disposed of by a single Judge of the Court, would be very trifling.

MR. CURRIE said, he was almost ashamed to say that he had omitted to refer to that provision of the Procedure Code to which his Honorable friend had alluded. He had been under the impression that all pending applications would be disposed of under the existing law. He was clearly of opinion that they ought to be so, because both the grounds of appeal and the mode of institution were changed by the Code, and it could not be advisable that applications filed under the existing law should be disposed of in the manner provided in the Code for cases to be instituted under very different conditions. If the provision of the Code on this point was as stated, he thought it would be necessary to modify it, and such modification might probably be made by the Select Committee on the present Bill.

The Motion was carried, and the Bill read a second time.

MR. CURRIE moved that the Bill be referred to a Select Committee consisting of Mr. Peacock, Mr. Harington, and the Mover, with an instruction to report thereon within a month.

Agreed to.

WARRANTS OF ATTORNEY AND COGNOVITS.

SIR CHARLES JACKSON moved the second reading of the Bill "to provide for the due execution of Warrants of Attorney to confess judgment and cognovits." In doing so, he said that he thought he had already stated all that he could say in support of the Bill, when he moved the first reading. Perhaps he had not sufficiently shown that the Bill related exclusively to proceedings in the Supreme Court. That, however, would be done in Select

Committee, if the Council should allow the Bill to pass the second reading.

The Motion was carried, and the Bill read a second time.

PILOT COURTS (BENGAL).

The Order of the Day being read for the third reading of the Bill "to make better provision for the trial of Pilots at the Presidency of Fort William in Bengal for breach of duty"—

MR. CURRIE said that, before he moved the third reading of the Bill, he thought it would be necessary to re-commit it for the purpose of making an addition to the Section (X) which was amended in Committee of whole Council at the last meeting. That Section, as it now stood, provided that, if any person summoned to attend as a juror did not attend on the day of trial, and if the parties did not consent that the trial should proceed without a full jury, the place of the absent juror should be supplied by some other person of the same profession or calling as the absent juror, who should consent to serve. Now he thought that it might frequently happen that the Judge would find it impossible at the last moment, under the restriction now prescribed, to get a person who would consent to serve as juror. To meet this contingency, it seemed to him to be proper that a proviso to the following effect should be added:—

"If the parties or either of them do not consent that the trial shall be held before the Judge and such jurors as may be in attendance, and the place of the absent juror cannot be supplied by a person consenting to serve, the trial shall be postponed to another day, and the Judge shall either re-summon the same jury, or appoint and summon another jury in the manner hereinbefore provided."

If the Council should agree with him in thinking some such addition to be necessary, he would propose the re-committal of the Bill.

Agreed to.

MR. CURRIE said, before proceeding to move the amendment to which he had referred, he would mention that on that very morning a demi-official note from the Bengal Government had been put into his hands, enclosing a letter from the Bengal Chamber of Commerce on the subject of this Bill. He did not propose to make any Motion upon the letter, but he thought it right that the letter should be read at the table. [The letter was then read by the Clerk.]

MR. CURRIE said, that the Chamber seemed to have misapprehended the provisions of the amended Bill. The composition of the jury under the Bill, as it now stood, was to be two Merchants, one Master of a Merchant Vessel, and one Pilot. He did not think it advisable or safe to adopt the suggestion of the Chamber to have only one Merchant and two Masters of Ships. The late Mr. Piddington, who had been so long President of Marine Courts, had said that the Captains of ships were very much under the influence of the Pilots, and could not be relied on for an independent verdict. Therefore he (Mr. Currie) did not think that a majority of the jury should be composed of Pilots and Masters of Ships. He thought it better to retain the provision of the Bill as it now stood.

Section X was then passed with the addition of Mr. Currie's proposed proviso; and the Council having resumed its sitting, the Bill was reported with an amendment.

MR. CURRIE moved the third reading of the Bill.

The Motion was carried, and the Bill read a third time.

RECOVERY OF RENTS (BENGAL).

THE PRESIDENT read a Message from the Governor-General, giving his assent to the Bill "to amend the law relating to the recovery of Rent in the Presidency of Fort William in Bengal," and communicating the following remarks:—

"I have this day given my assent to a Bill to amend the law relating to the recovery of Rent in the Presidency of Fort William in Bengal.

"As several assents and dissents have been recorded upon the passing of this Bill, I deem it respectful to the Legislative Council to state the reasons for which I assent to it.

"I believe that the Bill will confer a great practical benefit upon the Agricultural population of Bengal.

"I find that the Bill is objected to, not on account of the substantial alterations of the

law which it effects between Landlord and Tenant, but because it gives the original jurisdiction, in cases arising between Landlord and Tenant, to the Courts of the Revenue Officers, and takes away original jurisdiction from the regular Courts of Civil Judicature, and I find that this objection rests chiefly upon two grounds.

"*1st.*—That the number of Revenue Officers whom it will be practicable to invest with powers under the Bill will be so small that parties, and their witnesses, will be compelled to travel greater distances to obtain justice than would be necessary if the Civil Courts were allowed to retain jurisdiction in such cases.

"*2nd.*—That there is not a sufficient security that the Deputy Collectors will be qualified to try the suits in question.

"In regard to the first ground, it is by no means certain that the apprehension expressed will prove to be well founded; but were it otherwise, it would not, in my opinion, constitute a sufficient reason for throwing back wholly and for an indefinite time the operation of a measure, the substantial provisions of which will confer, in other respects, a sensible benefit upon a vast community.

"In regard to the second ground, I am satisfied that, as a class, Deputy Collectors are, by general education, by training, and by examination, quite as well qualified to try cases which arise between Landlord and Tenant as the persons who for the most part preside over the lowest class of Civil Courts in Bengal.

"Lastly, I have to observe, that no one doubts that it has long been desirable that the important questions connected with the relative rights of Landlord and Tenant dealt with in this Bill should be settled: that no objection is suggested to the nature of the settlement which the Bill contemplates; and that the Bill is a real and earnest endeavor to improve the position of the Ryots of Bengal, and to open to them a prospect of freedom and independence which they have not hitherto enjoyed, by clearly defining their rights and by placing restrictions on the power of the zemindars, such as ought long since to have been provided.

"This being so, I think that the Bill ought to pass into law, and that defects of machinery or procedure, if any should be found to exist, should be left to be remedied hereafter by a supplementary enactment.

"For these reasons I have given my assent to the Bill, and I beg leave to add the expression of my opinion, that the author of the measure, Mr. Currie, has established a lasting claim to the gratitude of the cultivators of the soil in Bengal, and to the acknowledgments of all who are interested in their well-being.

"CANNING.

"*The 29th April* 1859."

MR GRANT moved that this Message, with the dissents and assents which had been recorded, be printed.

Agreed to.

BREACHES OF CONTRACT BY ARTIFICERS, &c.

MR. CURRIE moved that the Bill "to provide for the punishment of breaches of contract by artificers, workmen, and laborers in certain cases" be read a third time and passed.

The Motion was carried, and the Bill read a third time.

SALE OF LAND FOR ARREARS OF REVENUE (BENGAL).

MR GRANT moved that the Bill "to improve the law relating to sales of land for arrears of revenue in the Bengal Presidency" be read a third time and passed.

The Motion was carried, and the Bill read a third time.

LIMITATION OF SUITS.

MR. HARINGTON said, before making the Motion of which he had given notice for the third reading of the Bill "to provide for the limitation of suits," he begged to move that the Bill be recommitted for the purpose of considering certain proposed amendments in it. He might mention now that, with one exception, the amendments which he wished to move were rendered necessary by the passing of the Bill relating to the recovery of arrears of rent in the Presidency of Bengal, to which the assent of His Excellency the Right Honorable the Governor-General had just been given.

Agreed to.

Clauses 2 and 3 of Section I were passed after amendments.

MR. HARINGTON moved the introduction of the following new Clause after Clause 3:—

"To suits to set aside any attachment, lease, or transfer of any land or interest in land by the Revenue Authorities for arrears of Government Revenue, or to recover any money paid under protest in satisfaction of any claim made by the Revenue Authorities on account of arrears of Revenue or demands recoverable as arrears of Revenue—one year from the date of such attachment, lease, or transfer, or of such payment, as the case may be."

He said, the new Clause proposed by him had been suggested by a remark of

one of the Members of the Sudder Board of Revenue at Allahabad, who seemed to think that suits of the nature described in the Clause could not be entertained by the Civil Courts. He (Mr. Harington) had no doubt of the competency of the Civil Courts to hear such suits, but as under the Bill as drawn a question might arise as to the period within which they should be instituted, he proposed to introduce the Clause of which he had given notice, in order to remove all doubts upon the point. The period of limitation fixed in it was the same as that allowed for the institution of suits to contest the summary awards of the Revenue Authorities in cases falling within Clause 4 of the Section. There seemed no good reason why a longer period should be allowed, much less that these cases should be left to fall within the general rule of limitation contained in Clause 15, which it had been suggested to him might be considered to be the case, unless some special provision was introduced in regard to them.

Agreed to

After some amendments in Clauses 4, 5, and 7, the Bill was reported.

MR. HARINGTON moved that the Bill be read a third time and passed.

The Motion was carried, and the Bill read a third time.

SMALL CAUSE COURTS.

MR. HARINGTON moved that the Council resolve itself into a Committee on the Bill "for the establishment of Courts of Small Causes beyond the local limits of the jurisdiction of the Supreme Courts of Judicature established by Royal Charter;" and that the Committee be instructed to consider the Bill in the amended form in which the Select Committee had recommended it to be passed.

Agreed to.

Sections I and II were passed as they stood.

MR. LEGEYT begged to move the introduction of the following new Section after Section II :—

"Provided that nothing in the preceding Section shall prevent any Court constituted under this Act from taking cognizance of any claims which the parties may be willing to submit to it, and for which an agreement of the nature indicated in Section 326 of Act VIII of 1859 may be presented to the Court."

The object of this Section was to allow parties, if they chose to do so, to submit any claims they pleased to the Small Cause Courts. He was sure that a far cheaper and more speedy decision might be expected from the small Cause Courts than from the regular Civil Courts.

MR. HARINGTON said, he believed that the Section which the Honorable Member for Bombay wished to introduce, if adopted by the Committee, would prove wholly inoperative, or very nearly so, and that he might therefore assent to the Motion without any apprehension as to the consequences. But although such was his persuasion, he felt that he must still vote against the introduction of the Section, because it proposed to give to the Courts contemplated by the Bill a jurisdiction which was foreign to the constitution of Courts of Small Causes. Under the Section proposed by the Honorable Member for Bombay, it must be obvious that the most difficult questions of law and fact might be referred for the determination of the Courts constituted under the Bill, questions of inheritance, questions of adoption, questions of mortgage, in fact any question, however intricate or complicated, and however protracted might be the enquiry to which it might give rise, and that suits of any amount or value might be brought within the cognizance of those Courts. Now he need scarcely remind the Committee that this was not the intention of the Bill. What was proposed was to provide a class of Courts for the speedy determination of simple actions of debt and the like of a limited amount or value, and he should be exceedingly sorry to see the attention of the Courts, which might be established under the Bill, diverted from the work which would properly devolve upon them, and for the performance of which they were to be specially created, to cases not heard elsewhere by Courts of Small Causes, even though the parties should agree to submit the matters in dispute between them to their decision. Then he wished to ask the Honorable Member for Bombay whether he intended to allow an appeal

in cases falling within the proposed new Section. Looking to the important and difficult questions which might be brought before the Courts under that Section, he (Mr. Harington) thought they could hardly say that no appeal should be allowed in such cases, however large the amount in dispute, or however difficult the question at issue; but the theory of the constitution of Courts of Small Causes was that the decisions passed by those Courts should be final and not open to appeal. He would only further remark that Section 142 of the new Code of Civil Procedure allowed any question of law or fact to be stated by the parties to a suit in the form of an issue, and required the Court to give judgment thereupon after taking such evidence as it might deem necessary. The proceedings under this Section would generally be very summary, and it seemed to him (Mr. Harington) that the permission given in it obviated the necessity of any rule of the nature of that proposed by the Honorable Member for Bombay, even though that rule were not open to the objections which he had mentioned.

MR. CURRIE said that, even if the Council were disposed to adopt the amendment of the Honorable Member for Bombay, the proposed Section did not seem to be expressed in terms sufficiently precise. He (Mr. Currie) was inclined himself to take the same view of the matter as had been taken by the Honorable Member for the North-Western Provinces, and not to burden Small Cause Courts with such cases.

The Motion was then put and negatived, and the Section passed as it stood.

Sections III to VIII were passed as they stood.

Section IX provided that the procedure to be observed in the trial of cases cognizable under this Act should be that prescribed by the Code of Civil Procedure.

MR. LEGEYT said that, after having given this Section full consideration, he was of opinion that it would be better to define the Sections of the Code which would be applicable to these Courts of Small Causes. If it was intended to appoint none but highly qualified Judges to preside over them, there would probably be no objection to the Section remaining as it now stood. But by a later Section of the Bill it was proposed to empower "any Executive Government of its own authority to invest any existing Court, subordinate to a District Court within the limits of its Government, with jurisdiction for the trial and final determination of suits made cognizable by Courts of Small Causes constituted under this Act, in which the amount or value in dispute shall not exceed the sum of fifty Rupees;" and it therefore seemed to him desirable that the procedure to be applied to these Courts should be defined It would be exceedingly difficult for Officers of the class to which the Judges presiding over their existing Native Courts belonged to discriminate between what portions should and what should not apply; and it would lead to constant disputes and confusion. He would therefore much prefer if the Sections of the Code, which would be applicable, were defined, although he was not prepared with any Motion on the subject defining the Sections. The selection might be hereafter made if the Committee agreed to the alteration.

MR HARINGTON said, the Honorable Member for Bombay, if he had understood him rightly, would have no objection to the Section under consideration as now framed, if Courts, specially constituted for the purpose, were alone to be employed to carry out the provisions of the Bill, since it might be hoped that a superior class of Judges would be appointed to those Courts; but as any existing Court might also be invested with jurisdiction to try cases under the Bill up to a certain amount, the Honorable Member thought it would be objectionable that the Courts so invested should be left to find out for themselves what Sections of the general Code of Civil Procedure were and what Sections were not applicable to the suits which would come before them in their capacity of Small Cause Judges, and he proposed, therefore, that the Sections by which those Officers were to regulate their proceedings in the trial and decision of such cases should be indicated by their numbers or defined. He (Mr. Harington) could not agree with the Honorable Member for Bombay He could not imagine that any Judge

who was considered competent to exercise general jurisdiction under the Code of Procedure, which had recently passed into law, could experience any difficulty in distinguishing between the Sections by which it would be his duty to regulate his proceedings in cases cognizable under the Bill, supposing him to be invested with power to try such cases, and the Sections which could come into operation only in cases falling within his general jurisdiction, particularly with the copious index which was now prefixed to the Code. The point had been fully considered by the Select Committee in consequence of a suggestion which had been made by the Honorable the Lieutenant-Governor of the North-Western Provinces, but the conclusion to which the majority of the Committee came was that a separate Code of Procedure applicable only to the cases which would be cognizable under the Bill, was neither necessary nor desirable, and they had reported accordingly.

The Section was passed as it stood.

Sections X to XVII were passed as they stood.

Section XVIII provided as follows :—

"Each party shall bear his own costs, if any, consequent on the reference of a case for the opinion of the Sudder Court."

MR. LEGEYT asked, why should each party bear his own costs? Why should not the costs follow the decision? He would omit the Section altogether, for the Code of Civil Procedure already provided as to costs.

MR. HARINGTON said, the rule objected to by the Honorable Member for Bombay was taken from the Bill for the more easy recovery of small debts and demands as finally settled by a Committee of the whole Council. He believed a similar provision was contained in the Act which regulated the proceedings of the Courts of Small Causes in the three Presidency Towns. As the reference to the Sudder Court would probably, in most cases, be made by the Lower Court of its own motion, it appeared to him but fair that, as provided by the Section, each party should bear his own costs, if any, consequent upon such reference. If, however, the Committee thought otherwise, he was quite willing to concede the point. It was not a matter of very great importance.

After some conversation—

MR. PEACOCK moved the omission of the words "Each party shall bear his own" at the beginning of the Section, and the addition of the words "shall be costs in the suit" at the end of the Section.

The Motions were severally carried, and the Section as amended was then passed.

Section XIX provided as follows:—

"It shall be lawful for any Executive Government of its own authority to invest any existing Court, subordinate to a District Court, within the limits of its Government, with jurisdiction for the trial and final determination of suits made cognizable by Courts of Small Causes constituted under this Act, in which the amount or value in dispute shall not exceed the sum of fifty Rupees. Whenever any Court is so invested, all suits cognizable under the provisions of this Act, which shall arise within the limits of the jurisdiction of such Court, shall be heard and determined in accordance with the provisions of this Act, and all the rules contained in this Act shall be applicable to such suits."

MR. LEGEYT said, he had no intention of offering any opposition to the power which this Section proposed to confer upon the Executive Government, but to the degree of power to be vested in the Courts. No one was more sensible than himself of the advantage to be derived by restricting as much as possible appeals from decisions of Small Cause Courts. For his own part he was disposed to allow no appeals from the decisions of such Courts below five hundred Rupees, but then the Courts must be presided over by Judges who would command the confidence of the public. He had no doubt that a large proportion of suits up to fifty Rupees would hardly bear the expense of an appeal, and that it would be very desirable to prevent a waste of money in litigations of this nature; still so far as he knew the feelings of the community on this point, the people did not like the idea of giving a finality of jurisdiction to the Native Civil Courts. He could not say what gave rise to this feeling, but of this he was certain, that a measure, which would take away the right of appeal from the decisions of these tribunals as at present constituted, would be very unpopular. In referring to a

Return of the Bombay Presidency for 1849, he found that out of 91,781 suits nearly 80,000 were below fifty Rupees, leaving only 11,000 above that sum. Now if the public would not trust the Moonsiffs with final jurisdiction in all cases, he saw no objection to vesting them with final jurisdiction below the trifling amount of ten Rupees. Such suits would not bear appeals. He found from the Return to which he had already referred, that the number of suits instituted in that year below ten Rupees was 36,801, from the decisions passed on which 1,600 appeals were brought. He was fully assured that no one who went into Court for so small a sum as ten Rupees would gain much, even if he won the action; an appeal was an absurdity. He was in favor, as he had already stated, of the principle of allowing no appeal below five hundred Rupees, if only highly qualified Judges were obtained for the disposal of all these cases. But he was not one of those who thought that highly qualified Judges could be obtained, and he therefore felt compelled to move the substitution of the words "ten Rupees" for the words "fifty Rupees."

MR. PEACOCK said, he agreed to some extent in the observations which had just been made by the Honorable Member for Bombay. But he went farther, and objected on principle to the Section altogether. He thought that, when a certain class of Courts existed, they should all be bound by the same rule. If the Section were passed as it now stood, upon what principle could the Executive Government regulate the exercise of the discretion proposed to be vested in them? If the Moonsiffs were not fit to be trusted with the proposed jurisdiction, they were not fit to be trusted with the jurisdiction which they now possessed. He did not see why a summary jurisdiction under this Act should be conferred by the Executive Government upon the Moonsiff's Court in district A, but not upon the Moonsiff of the adjoining district B. Was it because they had a good Judge in the former and a bad Judge in the latter? Suppose the inhabitants of district B petitioned the Government to confer a similar jurisdiction on their district. Would the Government tell them, "you have not so good a Judge in your district as there is in district A?" If so, they might justly reply, "If our Judge is not so good as the Judge of district A, give us then a competent Judge." He thought that there should be some fixed rule. He agreed with the Honorable Member for Bombay, that there were some cases of small amount in which it would be better to give no appeal. The waste of time and money involved in such litigation would render the appeal valueless. He would therefore fix some small amount, say ten or twenty Rupees, up to which there should be no appeal. He would give final jurisdiction to that extent to all Courts. What he proposed was to make every Moonsiff's Court a final Court of original jurisdiction up to twenty Rupees, and every Zillah Judge's Court a final Court of appellate jurisdiction up to five hundred Rupees. He was corroborated in the principle of not admitting the proposed Section by the decision of the Council on the old Small Cause Courts Bill. Upon that occasion the late Honorable Member for the North-Western Provinces (Mr. Allen) had proposed an amendment which was in substance the same as the Section under consideration. The question was fully debated, and there was a majority of six votes to two against the amendment; so that the principle of allowing final jurisdiction to the Moonsiffs' Courts generally had already been approved by the Council. If, however, in consequence of the opinions which had since been received, they now thought that the Moonsiffs' Courts should not be made Small Cause Courts up to fifty Rupees, such a jurisdiction might be given them to the extent of twenty Rupees. He begged to move, therefore, that this Section be omitted, and the following be substituted for it:—

"No appeal shall lie from a decree of any existing Court subordinate to a District Court in any suit of the description contained in Section II, when the debt, damage, or demand shall not exceed twenty Rupees; but every such decree shall be final. No special appeal shall lie from any decision or order passed in regular appeal by any Court subordinate to the Sudder Court, in any suit of the nature described in Section II, when the debt, damage, or demand for which the original suit shall be instituted shall not exceed five hundred Rupees; but every such order or decision shall be final."

MR. HARINGTON said, before he attempted to reply to the objections which had been urged by the Honorable and learned Member of Council (Mr. Peacock) to the Section at which they had now arrived, and to the amendment proposed by the Honorable Member for Bombay, he wished to observe that, if this Section were struck out of the Bill altogether, and no other Section put in its place, the Bill would still be quite complete in itself in so far as it authorized the establishment of Courts of Small Causes wherever they might be found necessary, defined the jurisdiction to be exercised by those Courts as regarded both the description and the amount or value of the suits to be heard by them, and prescribed the procedure to be followed in the trial and determination of such suits, and in executing the decrees which should be passed in them; and he felt satisfied that, as soon as this Bill became law, whether it stopped at the last Section which had been ordered by the Committee to stand part of the Bill, or whether it contained any further provisions, the Government would at once proceed to fulfil the obligation which would then, according to his view, devolve upon it, and would not only be prepared to give its sanction to the establishment of Courts of Small Causes, such as the Bill contemplated, at all places where the income of suits, made cognizable by those Courts, might be expected to afford sufficient employment to the Judges appointed to preside in them, but also to assign such salaries to the Judges so appointed, as would enable the local Governments to secure the services of really competent men, competent in point of integrity as well as in point of ability. It had been remarked again and again, and he thought it must be obvious to all, that the successful working of a measure of this nature must depend almost entirely upon the character of the agency employed to carry it out, and that the character of that agency again must be dependent in a great degree upon the remuneration to be received by the Officers composing it. In order to command the services of men who, from their education, character, and abilities, should be considered in all respects fitted for the exercise of the large powers which were now proposed to be conferred for the first time on the Courts of original jurisdiction in the Mofussil, ample salaries must be given. On this point he thought they were all agreed, and, looking to the extreme anxiety which had long been felt by the Government, both here and at home, for the improvement of the Judicial system in this country, and particularly for the establishment of Courts which might safely be entrusted with a summary jurisdiction for the final determination of the simpler classes of suits, he could not for a moment doubt that, as soon as this Bill passed, the Government would perform its part in the great reform contemplated by it in a large and liberal spirit. He felt that he should be doing injustice to the Government if he thought otherwise. He was well aware of the very serious pecuniary embarrassments under which, owing to recent events, the Government was, at present, unfortunately laboring; but he believed he might say that the Courts, for whose establishment this Bill made provision, would more than pay their expenses from the revenue derived from the sale of the stamp paper which would be used in their proceedings, and he certainly thought that any surplus income obtained from this source should be applied, in the first instance, to the improvement of the Courts in which it accrued, instead of being carried to account, as was now the practice, under the general head of judicial charges and receipts. It had been truly observed by a late Honorable and learned Member of this Council who, on the Motion for the second reading of the Bill, was prevented, to the great regret of all present, by a sudden attack of indisposition, from entering as fully into the subject as he had intended; that "having disposed, as he hoped, satisfactorily, of the principal difficulties of procedure, they had still to deal with the more important question of the reform of the Courts. He thought that he was not wrong in calling that the more important question, for surely the interests of justice were far more substantially secured by the trustworthiness and efficiency of the functionaries by which it was administered than by any simplicity or perfection of procedure." He believed that all who heard him would agree

in these remarks. Well then, should his expectations be realized, and Courts of Small Causes presided over by competent Judges be established at the Sudder Stations of the different districts, and at or in the neighborhood of the large towns and cities in the interior, or wherever there was work for them, with a sufficient extent of jurisdiction which, while it did not place those residing at the extreme limits thereof at too great a distance from the Court, would yet embrace a considerable radius, they would have provided a class of Courts, to the constitution and composition of which he could not conceive that any reasonable objection could be taken, for the final disposal, at a single trial, and generally at a single hearing, under a simple Code of Procedure, of at least one-half—probably referring to what had had just been mentioned by the Honorable Member for Bombay—of nearly three-fourths of the entire judicial business of the country, arising beyond the local limits of her Majesty's Supreme Courts of judicature, and he thought he might say that that would not be a small reform in the judicial system of the country Then the Act relating to the recovery of arrears of rent, for which they were indebted to the Honorable Member for Bengal, had provided a class of Courts, in so far as the Presidency of Bengal was concerned, the best suited, in the opinion of the Honorable Member and of others who thought with him, for the determination in the first instance of all suits arising between Landlord and Tenant or between Landlord and Agent. He thought he should not be guilty of any exaggeration if he estimated the average annual income of such cases in the Lower and North-Western Provinces at 100,000, so that this again was no inconsiderable reform, and here he must congratulate his Honorable friend, the Member for Bengal, on his having been present to-day, as he (Mr. Harington) had hoped he would be, when the assent of His Excellency the Governor-General was given to that great work which had been elaborated by him with so much labor, care, and ability, and which had elicited from His Excellency the high commendation that it would confer a great practical benefit upon the agricultural population of Bengal.

Mr. Harington

For some months past the Council had been engaged in considering in what way improvements could best be effected in the Civil Courts of this country. Various schemes had been proposed and a report had just been made on the subject by the Select Committees upon the Codes of Civil and Criminal Procedure prepared in England by Her Majesty's Commissioners. Whichever of these schemes was eventually adopted, he thought he might say that the Courts to be established under the Act of the Honorable Member for Bengal, and those which might be constituted under the Bill before the Council, should that Bill pass into law, would go far towards the solution of this very difficult question. But they could not stop there; they must go on until they reached the question of amalgamated Courts, that is, as he understood the matter, Courts composed partly of Judges appointed in England, and partly of Judges appointed in this country. It seemed to be the opinion in England that the Council was either unwilling or afraid to enter upon the consideration of this question; but he thought that there must be some misapprehension upon the point. No doubt Her Majesty's Commissioners proposed to establish a High Court in each of the three Presidency Towns and at Agra to take the places of the present Supreme and Sudder Courts, and in the Codes prepared by them they introduced provisions for the constitution of such Court, and for the duties to be performed by it; but in the Bills brought in by the Honorable and learned Member of Council on his left (Mr. Peacock), in which those Codes were embodied, the Chapters, which related to the High Court, were omitted, as he (Mr. Harington) understood, under orders from home, and the question of amalgamation had not yet been submitted for the consideration of the Council, or discussed by it.

He came now to the Section which was objected to by the Honorable and learned Member of Council (Mr Peacock), and to the scheme contained therein.

He was quite ready to admit that he attached comparatively little importance to this part of the Bill. From the first he had considered the main or

primary object of the Bill to be the establishment of separate Courts of Small Causes as calculated to give greater satisfaction, as well to the Government as to the people, in the decision of the cases which would be triable by those Courts than Courts exercising both general and what was understood by Small Cause jurisdiction. The investment of existing Courts with jurisdiction to try cases under the Bill had been with him all along a secondary consideration. In framing the Bill, however, he felt that, if he confined its operation to the establishment of separate Courts of Small Causes, the jurisdiction of which could not possibly be extended to all parts of the country, he should be depriving a very large section of the community of the benefits of what was called the Small Cause system, and that the Bill would, there fore, to a certain extent, be a partial one. In saying this he begged to observe that he did not consider that the Government was bound to give exactly the same kinds of Courts to all classes of its subjects. Persons residing in desert places, or amongst a scanty population, where there was little if any trade, or at a distance from large towns, were not, in his opinion, entitled to claim Courts of the same character and in the same number as persons residing in populous places or in places where there was a large amount of trade. Equality in this respect would be impossible, nor could any Government afford it. If people chose, for their own convenience, to live in out-of-the-way spots, they must be satisfied with such Courts as the Government could give them.

But still, if a system of Courts for the trial of Small Causes was to be introduced in the Mofussil, it was obviously just and proper that it should be extended as widely as possible He had, therefore, to consider in what manner this could best be done. Two ways presented themselves, by which the benefit of the system might be spread over a much wider extent of country, and might be made to reach a much larger number of persons than if separate Courts only in particular localities were established. The first way was that proposed in the Bill, namely, to allow the local Governments to invest any existing Courts with Small Cause jurisdiction up to a certain amount. The other way was that suggested by the Honorable and learned Member of Council, namely, to constitute every Moonsiff's Court a Court of Small Causes for the trial and determination of certain classes of suits up to ten or twenty Rupees, or even more. Now, except as to the amount, this was exactly the scheme which was proposed by the Honorable and learned Member of Council when the Bill for the more easy recovery of small debts and demands was under the consideration of the Council, and the arguments adduced by the Honorable and learned Member in favor of his proposition, and the objections urged by him to the scheme contained in the Bill were, in fact, little more than a reproduction of all that was said by him in the discussions which took place on the Bill to which he had just referred. But the Honorable and learned Member appeared to have overlooked the obstacle which had been intermediately raised up in the way of the adoption of his plan. That obstacle was the almost unanimous verdict which had been pronounced by those best competent to give an opinion on the subject, against the scheme of the Honorable and learned Member of Council, and in favor of the scheme proposed in the Bill. Amongst those who had joined in that verdict were the Governments of Madras and Bombay; the Lieutenant-Governors of Bengal and the North-Western Provinces; the Sudder Courts at Madras, Bombay, and Agra; the majority of the Sudder Court at Calcutta, and a very large majority of the Zillah Judges; and he said now, as he had said before, that surely this Council would not run counter to the opinions of all those authorities and force upon the country a scheme which had been so strongly condemned by them. It was entirely owing to this scheme having been brought forward, contrary to the advice of the original framers of the Bill for the more easy recovery of small debts and demands, that the country was not now covered or nearly covered with Courts of Small Causes, either separate Courts, or invested Courts. It was owing in a great measure to the same cause that the question of establishing Courts of Small Causes, the necessity

for which was so generally admitted, had been allowed to lie dormant for so long a period. Looking then to the effect which had been produced by the proposition of the Honorable and learned Member of Council, when formerly made, and to the very decided opposition which that proposition had met with, he (Mr. Harington) must be allowed to express his regret and surprise that the Honorable and learned Member of Council should again have brought it forward, and that, too, notwithstanding that no change of circumstances had intermediately taken place He would not occupy the time of Honorable Members by reading the opinions to which he had referred, but he begged Honorable Members carefully to consider those opinions before they gave their vote in favor of the Honorable and learned Member's Motion. Surely the Honorable and learned Member of Council must admit that young natives, of whose antecedents they might be entirely ignorant; of whose character they might really know scarcely any thing, and of whose qualifications for the important office of Judge, all that they knew was that they had passed an examination, the written questions proposed at which were, in all probability, surreptitiously obtained by them beforehand, were not the men to be entrusted immediately on their elevation to the Bench, when in the great majority of cases they must necessarily be devoid of all judicial experience, with a final jurisdiction in about nine-tenths of the suits, which would come before their Courts, and that, too, in a country where there was neither press nor any public opinion to exercise an influence upon them. Yet such would be the case if they agreed to the amendment of the Honorable and learned Member of Council. If that amendment were carried, he (Mr. Harington) could only repeat what he said when he introduced the Bill, namely, "that they would be commencing at the wrong end; that they would be giving large powers to those who were the least fit to be entrusted with them, and that, too, over the most indigent and most helpless classes of the people, who could ill afford to lose the smallest sum, and who were the most destitute of power to complain or make known their grievances." Now the scheme contained in the Bill was open to none of these objections. Where a separate Court of Small Causes might be established, there would be no necessity for investing any existing Court, holding its sittings within the same local limits, with Small Cause jurisdiction. Where there was no such separate Court, it would be competent to the local Government to invest any existing Court with jurisdiction to try cases under the Bill not exceeding in amount or value the sum of fifty Rupees. The Sudder Courts would always be at hand to advise the local Governments as to the qualifications and merits of the Officers employed under them, and he thought they might safely trust the local Governments to extend the system to all parts of the country as fitting instruments could be found for carrying it out. But the Honorable and learned Member of Council said that the inhabitants of those places in which there was no Small Cause Court, nor any Court invested with Small Cause jurisdiction, would complain, and as he thought, with justice, that they were excluded from the benefits of the system; they would say that it was hard upon them that they should be obliged to put up with an inferior Judge, and that, because he could not be trusted, his decisions, even in cases of the smallest amount, should be open to appeal. But did the Honorable and learned Member really believe that such a complaint would ever be made? He (Mr. Harington) thought, as he had remarked on a former occasion, that those who were to be deprived of the right of appeal under the Bill would complain of the loss, not that they should hear any complaints from those who, from whatever cause, were to be left in the enjoyment of that right. What did the natives say—why, that if the right of appeal was taken away, our judicial system would be no better than that which obtained under native rule. It was this fondness for appeal, and not the dislike to it, from which it seemed so desirable to detach the natives of India. This the Bill proposed to do by degrees, or again to quote the words of the Honorable the Lieutenant-Governor of Bengal,

"Gradually to introduce into the large towns and marts, and thence, step by step, into

other places in the interior, Small Cause Courts, after the pattern of the successful Court in Calcutta, thereby weaning the natives from their attachment to judicial formalities and continuous appeal, and, by little and little, accustoming them to the use of simple, informal, and final Courts of justice, just as the natives of Calcutta had been gradually accustomed to the Calcutta Small Cause Court, until it had become with them an entirely favorite institution."

It should be borne in mind that the Bill would not take away any thing from those places to which its provisions did not extend; they would be left, as at present, only with a much better and much simpler Code of Procedure. The Honorable and learned Member of Council thought that this Council might, with equal propriety, empower the local Governments to determine to what extent every Sessions Judge should have power to punish within certain limits, as to declare from what Moonsiffs' decisions an appeal should lie, and what Moonsiffs' decisions should not be open to appeal, for such he said would be the real effect of the Section as now framed. But surely there was a great difference between Officers holding the appointment of Civil and Sessions Judge, which was never given except to old and experienced Members of the Covenanted Civil Service, and young natives entering the service of Government for the first time, of whom, as he had said, they often knew little, if any thing, at the time of their appointment, and who, in the great majority of cases, had had no judicial experience. It was to the giving to these young men indiscriminately final jurisdiction in any class of cases, that he (Mr. Harington) entertained such strong objections. The Honorable Member for Bombay, in the amendment proposed by him, did not object to the principle of allowing the Executive Governments to invest any existing Courts with Small Cause jurisdiction, but as he seemed to think that the Lower Courts could not be trusted as a body, or at any rate that they did not enjoy the confidence of the people, the Honorable Member was of opinion that, in fixing the amount or value of the suits in which that jurisdiction might be exercised, at fifty Rupees, too high a sum had been taken, and he proposed to reduce it to ten Rupees. The question therefore at issue between himself and the Honorable Member for Bombay was one merely of degree. Now it certainly did not appear to him (Mr. Harington) that there was any such difference between simple actions of debt and the like for fifty Rupees, and suits below that sum; that, if the Government were to be invested with the discretionary power contemplated in the Section at all, they could not be safely entrusted with the exercise of it to the extent proposed. He should therefore vote against the amendment of the Honorable Member for Bombay, as well as against the Motion of the Honorable and learned Member of Council.

MR. FORBES said, before the Council came to a decision, he desired to say a few words on the Motion of the Honorable Member for Bombay. The Honorable Member proposed to limit Small Cause jurisdiction to ten Rupees. But the Council were probably aware that, in Madras, District Moonsiffs had had jurisdiction to the extent of double that amount since 1816; and he would read to the Council the opinion of an Officer fully competent to speak upon the question of how far this unappellate jurisdiction had been exercised to the satisfaction of the people. Mr. Morehead (who was now a Member of the Madras Government) had said:—

"As a body I consider the District Moonsiffs intelligent and upright, and that, with few exceptions, they possess the confidence of the people. The files of their Courts are heavy, the average of appeals from their decisions is small, and in the exercise of their summary jurisdiction they have succeeded well; suits of this nature are speedily disposed of, parties do not complain of such decisions, and no representations that I am aware of have been made by the Civil Judges reflecting upon the manner in which this portion of their duties has been performed. It must moreover be borne in mind that our District Moonsiffs have exercised this summary jurisdiction since 1816, and no clamour has been raised against it, which could hardly have been the case had it been attended with evil results."

That was the opinion of a gentleman who had been thirty-five years in the Judicial Service, and for twelve or fifteen years a Judge of the Sudder Court; and it showed very clearly that the opinion expressed by the Honorable Member for Bombay, that the people would view the

grant of unappellate jurisdiction even as far as in cases of only ten Rupees in amount with great dissatisfaction, was not founded on what had been the experience in Madras during the last forty years.

He was in favor of an extension of that unappellate jurisdiction at the discretion of the Government as far as fifty Rupees, and he should vote for the Section as it stood.

Mr. LeGEYT said, he should be very glad himself to see the unappellate jurisdiction increased, but he believed that, unless they got these cases decided by European Judges or by Natives of the highest character, the people would not be satisfied.

The picture drawn by the Honorable Member for the North-Western Provinces was a delightful one to contemplate, but he could form no hope that that picture would be realized by this Bill. The Honorable Member had said that it would be the duty of Government to appoint qualified Officers to preside over the Courts to be constituted under the Bill. There was no doubt that this should be so. But was there in the present day any reasonable prospect of such a result? The tendency at present was reduction everywhere.

He had in his hand a Bombay Return, where he found that in the district of Poonah 8,374 suits were decided in the year before ten Native Judicial functionaries. Of these not more than 374 were for sums above fifty Rupees, leaving 8,000 suits for sums below fifty Rupees, which would, under this Act, have to come before Small Cause Courts. That would give an average of 800 suits in the year to a Small Cause Court Judge. He saw from this return that a very industrious and hard-working Native Judge in this same district of Poonah, could only get through 600 suits, and the Sudder Ameen, who was a very able Officer, could only decide 700 or 750 suits in the year. Therefore he did not expect that, with all the preparation of the suits, the execution of decrees, &c., they could get any Small Cause Judge to decide 800 suits in the year. But even if that were possible, was there any probability of Government giving ten Small Cause Judges to each zillah? He did not know what ground there was for supposing that people at large would be willing to accept of final jurisdiction up to fifty Rupees. His object in limiting the amount to ten Rupees was that he did not see how any man in his senses could object to so small a sum not being open to appeal. Nothing would rejoice him more than to see the picture drawn by the Honorable Member for the North-Western Provinces realized throughout the length and breadth of the land, but he believed it hopeless to expect such a result.

Mr. LeGeyt then withdrew his amendment with a view to supporting the Section proposed by the Honorable and learned Member (Mr. Peacock).

Mr. HARINGTON said, the Honorable Member for Bombay seemed to think it was hopeless to expect that a sufficient number of Courts would be established for the disposal of the large number of cases which would be cognizable under the provisions of the Bill, and in support of what he had stated upon this point, he instanced the fact that in the district of Poonah ten Judges were able to dispose of only 8,000 cases per annum; but the three Judges of the Small Cause Court at Calcutta disposed of upwards of 30,000 cases in the course of last year, and under the new Code of Civil Procedure, which, whatever might be thought of it in some quarters, was certainly less cumbersome in its character than the Code now in force in Bombay, he (Mr. Harington) saw no reason why the Courts, which might be established under the Bill, should not be able to dispose of nearly the same amount of work, or, at any rate, of a very much larger number of cases than was decided by the existing Courts under the present Regulations. Her Majesty's Commissioners had declared that the procedure proposed by them would be equally expeditious with that of the Courts of Small Causes at Calcutta, Madras, and Bombay, and whether the changes made in this country were to be regarded as improvements or the contrary, they certainly had not altered the character of the Code in the respect just mentioned. He was prepared to admit that the new Code threw more

upon the Judges than was the case at present, but they had a right to expect that those whose duty it would be to work the Code would not be wanting in doing what was required of them. This Council could only make laws; they could not compel obedience to them; this was the duty of the Executive Government, and they could only hope that no laxity would be permitted.

The Honorable Member for Bombay having asked to be allowed to withdraw his amendment, he (Mr. Harington) thought he might fairly claim the Honorable Member's vote against the Motion of the Honorable and learned Member of Council on his left (Mr. Peacock). The reason assigned by the Honorable Member for Bombay for proposing that the sum mentioned in the Section under discussion should be reduced from fifty to ten Rupees was that the Courts which might be invested with jurisdiction to try cases under the Bill did not as a body enjoy the confidence of the people. Such being the case, he (Mr. Harington) did not see how the Honorable Member for Bombay could consistently vote for the amendment of the Honorable and learned Member of Council, which proposed to give to all Courts indiscriminately, whoever might preside in them, a final jurisdiction in suits up to twenty Rupees.

MR. LEGEYT said, he did not know if it was necessary for him to reply to the charge of inconsistency brought against him by the Honorable Member for the North-Western Provinces. He would only say that his opinion had always been for giving final jurisdiction everywhere throughout India without distinction, in suits of very small amount or value. He should have preferred the limit to be fixed at ten Rupees; but after what had fallen from the Honorable Member for Madras, as to the results of the system obtaining in that Presidency, if the Council felt disposed to raise the limit to twenty Rupees, he would not object to it.

MR. CURRIE said, the question, as he understood it, was whether they should invest certain Courts (the Courts of Moonsiffs) indiscriminately with final jurisdiction up to twenty Rupees. He wished to say upon this question that he did not think it would be safe to give such a power to young men who, after passing a mere technical examination, were ordinarily appointed to the office of Moonsiff. In considering the jurisdiction to be conferred by the Rents Bill, he had proposed at first to give to Deputy Collectors a power of final adjudication in cases of certain amount, but on further consideration, and in deference to the opinions of several Officers of experience, he had concurred in an alteration made by the Select Committee, under which the cases in which he had proposed to give final jurisdiction, when decided by Deputy Collectors, were made appealable to the Collectors. Consistently therefore with the course which he had followed upon the occasion, he could not now vote in favor of giving final jurisdiction to Moonsiffs who, as a class, he believed to be greatly inferior to the Deputy Collectors.

MR. PEACOCK said, he wished to add a few words. The Honorable Member for Madras had admitted that for several years past Moonsiffs had exercised final jurisdiction up to twenty Rupees. He (Mr. Peacock) remembered that, when the old Small Cause Court Bill was under consideration, the question was asked, if Moonsiffs could be trusted with that jurisdiction in Madras, why should not the Moonsiffs in Bengal and Bombay be equally trusted? The Honorable Member for the North-Western Provinces said that he (Mr. Peacock) had overlooked the objections made to the passing of the former Bill. He had not done so. That Bill proposed to give final jurisdiction to the extent of fifty Rupees, whereas he now proposed to give it up to twenty Rupees. He would not press his opinion against those who thought that the Moonsiffs, as a body, were incompetent to be trusted with final jurisdiction up to fifty Rupees, but he thought that what had worked well in Madras would probably work well in the two other Presidencies. It was a fallacy to call the Courts, to be constituted under the Bill, Small Cause Courts.

He also thought that Zillah Judges should be entrusted with Small Cause jurisdiction up to five hundred Rupees.

MR. HARINGTON said, he desired to explain that he did not object to that part of the Honorable and learned Member's amendment which proposed to invest the Zillah Judges with a final appellate jurisdiction in simple actions of debt and the like, in which the amount or value in dispute did not exceed the sum of five hundred Rupees. To that part of the Honorable and learned Member's scheme it was not his intention to offer any opposition, nor had he said one syllable against it; what he objected to was the proposal to give a final jurisdiction in suits up to twenty Rupees to all Native Judges without any distinction.

MR. PEACOCK, with the leave of the Council, withdrew his amendment, and stated his intention of dividing it into two, so as to bring each forward separately. He should now content himself with merely voting against the Section under discussion. If the Moonsiffs in Madras could exercise final jurisdiction up to twenty Rupees, not only in claims for debt, but also in suits relating to land, he confessed he saw no reason why the Moonsiffs in Bengal and Bombay should not be vested with that jurisdiction in suits cognizable under this Bill.

MR. HARINGTON said, so much stress had been laid upon the fact of the whole of the Moonsiffs in the Madras Presidency having a final jurisdiction in all suits, as well for real as for personal property, up to twenty Rupees, that he considered it necessary to read to the Committee what had been said of these Officers by the Madras Sudder Court. On the 14th July 1854 the Court declared that they were not men whose honesty was unimpeachable, and in whose efficiency in the discharge of their duties every reasonable confidence might be reposed. Here they had the opinion of the highest Appellate Court at Madras in respect of the Judges in whose favor so much had been said in the course of this debate, and it must be presumed that the Sudder Court at Madras had good grounds for the opinion which they had given. But whatever might be the character of the Madras Moonsiffs, this Bill did not propose to deprive those Officers of any jurisdiction now vested in them. That would remain untouched. There was a great difference, however, between giving a new jurisdiction and taking away a jurisdiction which had been long exercised. He must repeat that the Bill would leave the residents of those places to which its provisions were not extended in the full enjoyment of all that they now possessed; while as regarded the question of appeal, he believed that if the country were canvassed, a very large majority of the people would be found voting for the continuance of the present system with its right of appeal in every case, rather than for the introduction of a system which, though it might give them a superior Judge, proposed to deprive them of a privilege to which they attached the greatest importance, and which was highly valued by them.

The question being then put that Section XIX stand part of the Bill, the Council divided—

Ayes 3.	*Noes* 4.
Mr. Forbes.	Mr. LeGeyt.
Mr. Harington.	Mr. Peacock.
Mr. Currie.	Sir J. Outram.
	The Chairman.

So the Section was negatived.

MR. PEACOCK moved the introduction of the following new Section after Section XVIII :—

"No appeal shall lie from a decree of any existing Court subordinate to a District Court in any suit of the description mentioned in Section II, when the debt, damage, or demand shall not exceed twenty Rupees, but every such decree shall be final."

Agreed to.

MR. PEACOCK moved the addition of the following proviso to the above Section :—

"Provided that the provisions of Section IX and the proviso in Section XI shall be applicable to every suit in which the decree is by this Section made final."

The Motion was carried, and the Section as amended then passed.

MR. PEACOCK moved the introduction of the following new Section after the above :—

"No special appeal shall lie from any decision or order passed on regular appeal by

any Court subordinate to the Sudder Court in any suit of the nature described in Section II, when the debt, damages, or demand for which the original suit shall be instituted shall not exceed five hundred Rupees. But every such order or decision shall be final."

Agreed to.

MR. PEACOCK moved the introduction of the following new Section after the above :—

"In every case in which a decree or decision is, by the two last preceding Sections, made final, the Court passing the final decree or decision shall have the same power to draw up a statement of the case for the opinion of the Sudder Court as is hereby vested in a Court of Small Causes, and all the provisions of this Act relative to statements drawn up by Courts of Small Causes shall be applicable to statements drawn up under the provisions of this Section."

Agreed to.

MR. LEGEYT asked leave to go back to Section V, with a view to moving an amendment, the effect of which would be highly beneficial, and would give the Bill the only chance of being universal. It would vest in Small Cause Courts the power of trying suits above twenty Rupees wherever Small Cause Courts might exist ; and with regard to the zillah of Poonah, one or two Small Cause Courts would be able to get through all the other suits between two and twenty Rupees, which he could only call rubbish. This would give a very fair chance of Small Cause Courts being really established. Surely if a case under twenty Rupees could be decided by the Moonsiff on one side of the hedge, the same should be done by the Moonsiff on the other side also. He would ask if there was any reasonable hope of Small Cause Courts being established except at a very few places. It was all very well to say that these Courts would pay their own expenses. The sums now realized by Stamp Duties were all taken to credit, and it was perfectly illusory that any larger revenue would be derived. It should also be remembered that a large increase of establishment would be required consequent on the establishment of the Small Cause Courts. He therefore proposed that the words "for any amount exceeding twenty Rupees" be inserted after the word "Act" in line 5.

MR. HARINGTON said, the object chiefly aimed at in the present Bill was the improvement of the Courts, by which the great mass of the Civil judicial business of the country was now disposed of, or, he should rather say, the introduction of a superior class of Courts in their places, to which much larger powers might be safely confided, and it could hardly be necessary for him to tell the Committee that this object would be very partially attained if about three-fifths, or, he might perhaps say, even a larger number of the cases, for the adjudication of which it was proposed to create new Courts, were to be excluded from their cognizance, which would be the obvious effect of the amendment moved by the Honorable Member for Bombay, if he had rightly understood that amendment. They were constantly told that the Moonsiffs' Courts, by which all petty actions of debt and the like were now heard, were bad, that they were corrupt, and that they did not command the confidence of the public ; and yet when it was proposed to provide a better class of Courts for the adjudication of the greater portion of the cases now cognizable by these much abused Courts, the Honorable Member for Bombay came forward with a Motion which, if adopted, would exclude all these numerous cases from the jurisdiction of the new Courts, and leave them to be determined as at present, though with this difference, in consequence of the amendment which had just been made in the Bill on the Motion of the Honorable and learned Member of Council on his left (Mr. Peacock), that the decisions passed in them would be no longer open to appeal. But the Honorable Member for Bombay said, the cases which would be embraced by his amendment were nothing more than rubbish. If such were indeed the case ; if three-fourths of the Civil suits of the country answered the description given of them by the Honorable Member for Bombay, and it mattered little what was the character of the Judges who decided them, it certainly seemed to him (Mr. Harington) open to question whether it would not

be better to adopt the suggestion which was made not long ago by a Member of the Civil Service in the North-Western Provinces, now no more, and declare that no action for debt or damage up to a certain amount should be sustainable in any Court. The Honorable Member for Bombay seemed to think that the Government would never consent to establish Courts with high paid Judges in such numbers as would be necessary for the disposal of the great mass of petty litigation which now found its way into our Courts, and that it was only by adopting his amendment that any benefit might be expected to result from the passing of this Bill. He (Mr. Harington) had already expressed his belief that the Courts which he wished to see established, if judiciously placed, would more than cover the expense of maintaining them. He found that the fees paid into the Small Cause Court at Calcutta during the past year exceeded the cost of that Court by several thousand Rupees, and the same was the case in respect to the Moonsiffs' Courts, at least in the North-Western Provinces, though if the Courts, the establishment of which this Bill contemplated, were not to have jurisdiction in cases under twenty Rupees, and the present Moonsiffs' Courts were to be kept up for the disposal of cases below that sum, which would be necessary if the amendment of the Honorable Member for Bombay should be carried, they could scarcely expect the Government to go to the expense of establishing separate Courts of Small Causes, certainly not in any number. Should this Bill pass into law in the form in which the majority of the Select Committee had recommended that it should be passed, he (Mr. Harington) looked forward to a considerable reduction in the present number of Moonsiffs' Courts, particularly now that they had got the Act relating to the recovery of arrears of Rent in Bengal, which had been brought in by his Honorable friend opposite (Mr. Currie). He would take the District of Benares as an instance. There were now employed in that District no less than four Moonsiffs and a Principal Sudder Ameen, all of whom held their Courts in the city of Benares or within a short walk of it. He believed that a Small Cause Court presided over by a competent Judge and a single Court for the trial of suits beyond the jurisdiction of the Small Cause Court would be amply sufficient for the whole District with, of course, a suitable Appellate Court, so that in this one district alone there would be a reduction of three badly paid Courts, and so on. He was aware that under the scheme proposed by him the parties in suits relating to real property, or in which the amount or value in dispute might exceed the jurisdiction of the Small Cause Courts, would have to travel farther for justice than at present, but in such cases distance would not be of so much consequence as in petty actions of debt and the like, and the parties would not feel in the same degree the little additional expense or delay to which they would be exposed from this cause. He should vote against the Motion.

MR. LEGEYT'S Motion being put, the Council divided—

Ayes 4.	*Noes* 3.
Mr. LeGeyt.	Mr. Forbes.
Mr. Peacock.	Mr. Harington.
Sir James Outram.	Mr. Currie.
The Chairman.	

So the Motion was carried, and the Section as amended then passed.

The Preamble and Title were passed as they stood, and the Council having resumed its sitting, the Bill was reported with amendments.

ADJUDICATION OF FORFEITURES.

MR. GRANT announced that the Governor-General had signified his assent to the Bill "to provide for the adjudication of claims to property seized as forfeited."

SALES OF LAND FOR ARREARS OF REVENUE.

MR. GRANT moved that Sir James Outram be requested to take the Bill "to improve the law relating to sales of land for arrears of revenue in the

Bengal Presidency" to the Governor-General for his assent.

Agreed to.

FRAUDULENT TRANSFERS AND SECRET TRUSTS.

MR. FORBES moved that a communication received by him from the Madras Government be laid upon the table and referred to the Select Committee on the Bill "for the prevention of fraudulent transfers of property and of secret trusts."

Agreed to.

LIMITATION OF SUITS.

MR. HARINGTON moved that Sir James Outram be requested to take the Bill "to provide for the limitation of suits" to the Governor-General for his assent.

Agreed to.

SMALL CAUSE COURTS.

MR. HARINGTON moved that the Bill "for the establishment of Courts of Small Causes beyond the local limits of the jurisdiction of the Supreme Courts of Judicature established by Royal Charter" be republished for two months.

Agreed to.

PILOT COURTS (BENGAL).

MR. CURRIE moved that Sir James Outram be requested to take the Bill "to make better provision for the trial of Pilots at the Presidency of Fort William in Bengal" to the Governor-General for his assent.

Agreed to.

BREACHES OF CONTRACT BY ARTIFICERS, &c.

MR. CURRIE moved that Sir James Outram be requested to take the Bill "to provide for the punishment of breaches of contract by artificers, workmen, and laborers in certain cases" to the Governor-General for his assent.

Agreed to.

The Council adjourned.

This leaf to be cancelled on the issue of Part V.

Bengal Presidency" to the Governor-General for his assent.

Agreed to.

FRAUDULENT TRANSFERS AND SECRET TRUSTS.

MR. FORBES moved that a communication received by him from the Madras Government be laid upon the table and referred to the Select Committee on the Bill "for the prevention of fraudulent transfers of property and of secret trusts."

Agreed to.

LIMITATION OF SUITS.

MR. HARINGTON moved that Sir James Outram be requested to take the Bill "to provide for the limitation of suits" to the Governor-General for his assent.

Agreed to.

SMALL CAUSE COURTS.

MR. HARINGTON moved that the Bill "for the establishment of Courts of Small Causes beyond the local limits of the jurisdiction of the Supreme Courts of Judicature established by Royal Charter" be re-published fortwo months.

Agreed to.

PILOT COURTS (BENGAL).

MR. CURRIE moved that Sir James Outram be requested to take the Bill "to make better provision for the trial of Pilots at the Presidency of Fort William in Bengal" to the Governor-General for his assent.

Agreed to.

BREACHES OF CONTRACT BY ARTIFICERS, &c.

MR. CURRIE moved that Sir James Outram be requested to take the Bill "to provide for the punishment of breaches of contract by artificers, workmen, and laborers in certain cases" to the Governor-General for his assent.

Agreed to.

The Council adjourned.

Saturday, May 7, 1859.

PRESENT:

The Hon'ble Lt.-General Sir James Outram.

Hon'ble B. Peacock,	H.B. Harington, Esq.,
P. W. LeGeyt, Esq.,	H. Forbes, Esq., and Hon. Sir C. R. M. Jackson.

The Members assembled at the Meeting did not form the quorum required by Law for a Meeting of the Council for the purpose of making Laws.

Saturday, May 14, 1859.

PRESENT:

The Hon'ble Barnes Peacock, *Vice-President*, in the Chair.

Hon Lieut.-Genl. Sir J. Outram,	H. Forbes, Esq.,
Hon. H. Ricketts,	Hon. Sir C. R. M. Jackson,
P. W. LeGeyt, Esq.,	and
H. B. Harington, Esq.,	A. Scoble, Esq.

SALE OF LAND FOR ARREARS OF REVENUE (BENGAL); PILOT COURTS (BENGAL); BREACHES OF CONTRACT BY ARTIFICERS, &c.; AND LIMITATION OF SUITS.

THE VICE-PRESIDENT read Messages informing the Legislative Council that the Governor-General had assented to the Bill "to improve the law relating to sales of land for arrears of Revenue in the Bengal Presidency"—the Bill "to make better provision for the trial of Pilots at the Presidency of Fort William in Bengal for breach of duty"—the Bill "for the punishment of breaches of contract by artificers, workmen, and laborers in certain cases"—and the Bill "to provide for the Limitation of Suits."

EXCLUSIVE PRIVILEGES TO INVENTORS.

The following Message from the Governor-General in Council was also read by the Vice-President:—

MESSAGE No. 177.

With reference to the Message from the Legislative Council, No. 95, dated the 2nd October 1858, the Governor-General in Council has the honor to forward to the Legislative Council copy of a Despatch No. 3, dated the 31st March 1859, from the Right Honorable the Secretary of State for India, together with the Draft Act, therewith received, "for granting exclusive privileges to Inventors," which has received the sanction of the Crown.

By order of His Excellency the Governor-General in Council.

W. GREY,
Secy. to the Govt. of India.

Fort William, the 11th May 1858.

NEW MEMBER.

THE CLERK reported to the Council that he had received a letter from the Bengal Government, intimating that the Lieutenant-Governor had nominated Mr. Sconce to be a Member of the Legislative Council.

Mr. Sconce was duly sworn, and took his seat.

VILLAGE WATCHMEN (BENGAL).

THE CLERK presented a Petition from Emmadooddeen Mahomed of Beerbhoom, concerning the Bill "to regulate the appointment, employment, and dismissal of Village-watchmen in the Territories under the Government of the Lieutenant-Governor of Bengal."

MR. RICKETTS moved that the Petition be referred to the Select Committee on the Bill.

Agreed to.

CATTLE TRESPASS.

THE CLERK presented a Petition from the Indigo Planters' Association, praying for the enactment of a law, similar to Section IV Regulation V. 1830 of the Bengal Code (repealed by Act III of 1857), which provided a punishment for wilful damage to indigo plant by other means than Cattle Trespass.

MR. LEGEYT moved that the Petition be referred to the Select Committee on the Bill "to amend Act III of 1857 (relating to trespasses by cattle)."

Agreed to.

REGULATION OF CONVEYANCES (STRAITS' SETTLEMENT).

THE CLERK reported to the Council that he had received a communication from the Governor of the Straits' Settlement with the draft of an Act for the regulation of hack carriages, passenger boats, and other conveyances in that Settlement.

MR. LEGEYT moved that the communication be printed.

Agreed to.

SIR JAMSETJEE JEEJEEBHOY'S ESTATE.

MR. LEGEYT presented the Report of the Select Committee on the Bill "for settling a sum of money, and a mansion-house and hereditaments called Mazagon Castle, in the Island of Bombay, the property of Sir Jamsetjee Jeejeebhoy, Baronet, so as to accompany and support the title and dignity of a Baronet lately conferred on him by Her present Majesty Queen Victoria, and for other purposes connected therewith." At the same time he begged to move that the Report be read by the Clerk, with a view to his (Mr. LeGeyt's) afterwards moving its adoption by the Council. His reason for doing so was that the family and friends of the late Baronet were extremely desirous that the Bill should be settled, in accordance with the wishes of the deceased Baronet, as speedily as possible. He had received several communications on the subject from the Bombay Government, who were of opinion that the Council would be conferring a great favor on the family of the late Baronet if the Bill were passed at once. The Bill was so completely of a private nature, that it was scarcely necessary that there should be the delay of printing and circulating the Report previously to its adoption.

The Motion was carried, and the Report read accordingly.

MR. LEGEYT then moved that the Report be adopted.

MR. PEACOCK said, he regretted very much that any delay had taken place in the passing of this Bill, especially as the sons of the late Baronet were most anxious to carry out their father's intentions at once. But there were certain recitals in the Bill which required alteration to adapt them to the present state of circumstances, and the Select Committee were not in possession of sufficient information to enable them to make the necessary alterations. For instance, the Bill said that Sir Jamsetjee Jeejeebhoy was possessed of a mansion-house and appendages called Mazagon Castle. The Select Committee could not know who was at present in possession of Mazagon Castle, or whether it had descended to the present Baronet, or had been devised by the will of the late Sir Jamsetjee Jeejeebhoy.

Another difficulty was that it was proposed to incorporate certain Government Officers at Bombay as trustees of the property to be conveyed for the support of the title. One of those Officers was the Commissioner of Revenue. It was not impossible, nor indeed improbable, that that office might be abolished, and it was therefore necessary to make some provision for the reconstruction of the Corporation in the event of the abolition of any of the offices of which the holders were to be ex-officio trustees under the Act. He (Mr. Peacock) did not think it right that the Select Committee should, without the consent of the present Baronet and the other persons entitled, provide for the re-construction of the Corporation in the event of the abolition of any of the said offices. It appeared to him, therefore, that the Report just read should be adopted and sent to the present Baronet. The Council could consider any other Bill which the present Baronet might think proper to submit to them.

The Motion was carried.

REPEAL OF ACTS AND REGULATIONS.

MR. HARINGTON moved the first reading of a Bill "to repeal certain Regulations and Acts relating to the Procedure of the Courts of Civil Judicature not established by Royal Charter." He said, this Bill was intended as a supplement to the Act which had lately been passed by the Council for simplifying the Procedure in the Courts of Civil Judicature in this country, not established by Royal Charter, and which, having received the assent of His Excellency the Right Honorable the Governor-General, was now enrolled amongst the Statutes for India as Act No. VIII of the current year. The Act concluded by declaring that, from and after the time when it should come into operation in any part of the British Territories in India, the Procedure of the Civil Courts in such parts of the said Territories should be regulated by the Act, and, except as otherwise provided by the Act, by no other Law or Regulation. The Section in which this declaration was contained did not form part of the Bill, as originally prepared, but was added in Committee of the whole Council, as it was considered that the Code would not be complete without it. It was at the same time intimated that this Section was not intended to do away with the necessity of any further legislation on the point to which it related, but that it was proposed, as soon as the new Code of Procedure became law, to bring in a Bill to repeal all existing Regulations and Acts or parts of Regulations or Acts which would be superseded by its provisions. The Bill, of which he was about to move the first reading, had been framed in pursuance of the intention thus expressed. The Preamble recited the reasons which had rendered the introduction of the Bill necessary. This was followed by a single enacting Clause in the usual terms of a repealing Act, and then came a Schedule, in which, as appearing to be the most convenient mode of proceeding, the whole of the laws proposed to be repealed were thrown together in columns with suitable headings. This Schedule had been carefully prepared with the assistance of the Honorable Members for Madras and Bombay, and of the Clerk and Assistant Clerk of the Council, and it was hoped that it would be found to contain all the Regulations and Acts now in force in the three Presidencies, which would cease to have effect from the dates on which the new Code of Civil Procedure would come into operation in those Presidencies respectively. The opportunity had also been taken to repeal a number of Regulations relating to the late Courts of Appeal and the Courts of the Zillah Registers, which, in consequence of the abolition of those Courts, had long been a dead letter, but which still encumbered the Statute Book. The total number of Regulations and Acts proposed to be repealed, either wholly or in part, was a hundred and thirty-eight; of these eighty would be entirely repealed, and fifty-eight partially. These Regulations and Acts were scattered through a large number of volumes, and extended over a period of upwards of sixty years, commencing with the year 1793. So that, regarded merely as a work of codification, if it had no higher merit, the new Code of Civil Procedure, the whole of which was con-

tained in the small thin volume which he held in his hand, would, he thought, prove an immense boon to the various Courts of Civil Judicature spread over this vast country, whose proceedings were to be regulated by its provisions, as well as to the people at large. Should the Council permit the Bill to be read a first time, he proposed to ask for the suspension of the Standing Orders to enable him to move that the Bill be read a second time also to-day. This Motion, if carried, would be followed by the publication of the Bill for general information in the next issue of the *Calcutta Government Gazette*, and he proposed further to move that the Select Committee, to which the Bill would be referred in the usual course, be instructed to make their report within six weeks from this date. He thought that this would allow ample time for the Select Committee to receive from the Local Governments any suggestions which they, or the Officers subordinate to them, might wish to make, either for the purpose of supplying any omissions which might have occurred in the preparation of the Schedule annexed to the Bill, or with a view to the removal therefrom of any laws which had been improperly inserted. With regard to Bombay, which, in so far as the transmission of letters by post was concerned, was the farthest removed from them, he might mention that the whole of the Regulations relating to the Procedure of the Civil Courts of the East India Company in that Presidency, having been codified in the year 1827, it would not be necessary for any of the Bombay officials who might feel disposed to assist them on this occasion to go back beyond that year, and their work of revision would, consequently, be comparatively light. It could scarcely be necessary for him to remark that it was very desirable that the Bill which he wished to introduce, and the Act containing the new Code of Civil Procedure, which, as he had said, the Bill was intended to supplement, should come into operation at the same time. In the Presidency of Bengal the new Code of Civil Procedure would take effect from the 1st July next, which was now close at hand, and in Madras and Bombay from the 1st January 1860, or such earlier day as the Local Government in those Presidencies respectively should fix and publicly notify in the *Gazette* of the Presidency, three months at least before the date so fixed, and, notwithstanding what had lately been stated in another high quarter, he must say that it would be a great disappointment to him, and he thought he might add that it would be a subject of deep and universal regret if any thing occurred to prevent the Code from coming into operation in the three Presidencies on the dates which he had mentioned. But should such a misfortune happen, and knowing from a long judicial experience the great benefits which might be expected to result from the introduction of the new Code, he could call such a contingency by no other name, the Bill now proposed for adoption, even if it should have passed into law at the time, would be simply inoperative, and he could see no reason, therefore, for their delaying to pass that Bill until they were informed of the result of the attempts which they had reason to believe were being made to render nugatory, for a time at least, the labors of this Council, in preparing and bringing to maturity a Code of Civil Procedure for all India, though at first it was not intended to apply to the Courts established by Royal Charter. Honorable Members who had read the Minute on the subject of the amalgamation of the Supreme and Sudder Courts at Madras, which had lately appeared in the public prints, and to which the signature of His Excellency the present Governor of Madras was affixed, would, he thought, consider that he had good grounds for what he had just stated as to what was being done to suspend, if not to stop altogether, the action of the new Code of Civil Procedure which had been prepared and passed by the Council. Looking to the constitution of the Local Governments and to the relation or subordination in which they stood to the Supreme Government, of which there could be no question this Council was a component part, some doubt might be entertained as to the authenticity of the document to which he had alluded, but he believed that he should not do wrong if he assumed that

document to be authentic, and referred to it under that assumption. His Excellency the Governor of Madrás in this Minute expressed a hope that Her Majesty would be advised to disallow the Act in which the new Code of Civil Procedure was contained. An uninitiated person, or any person not fully master of the subject, would naturally be led to suppose that the hope thus expressed was grounded on a belief or conviction that the Code, considered merely as a Code of Procedure—and it did not profess to be any thing more—was defective in itself; that it did not answer its title; that this Council having been required to prepare a Code for simplifying the Procedure of the Courts of Civil Judicature in this country had failed to accomplish that object, and that little, if any, advantage would result from introducing the Code prepared by them in supersession of existing enactments. But this was not the ground on which His Excellency the Governor of Madras had based the hope expressed by him that Her Majesty would be advised to disallow the Act containing the new Code. The objection urged to the Code by His Excellency the Governor of Madras was that it made no provision for uniting the Sudder and Supreme Courts, or for extending the improved Procedure to the Supreme Courts. In a parenthesis His Excellency had declared his belief that the proposed alterations in the Code of Procedure were conducive to speedy and economical justice, which must be looked upon as high praise coming from him, but because a small, though, no doubt, a most intelligent and influential section of the large Indian community, that is to say, those residing within the local limits of the jurisdiction of Her Majesty's Supreme Courts of Judicature at Calcutta, Madras, and Bombay, from which number must however be deducted all those numerous classes, whose disputes never took them beyond the jurisdiction of the Courts of Small Causes in the three Presidency Towns, would not enjoy the benefit of these alterations and improvements from the same date as the millions who were subject to the jurisdiction of the Courts to which the provisions of the Code were at once to be extended, His Excellency would indefinitely postpone the period for the Code coming into operation, or, in other words, would punish these millions, for such would be the effect, if the hope expressed by His Excellency should be realized, for the sake of a few thousands, who, whether rightly or wrongly, wisely or unwisely, were strongly opposed to the changes in contemplation, and whose only wish was to be left alone. But His Excellency said that, if the Act containing the new Code of Civil Procedure were confirmed, it would be a practical adoption of the old divided jurisdiction into the new regime, and would indefinitely postpone the establishment of a united system of judicature. He (Mr. Harington) must confess that he could not see why this should necessarily be the case. In preparing the new Code of Civil Procedure, the object had been steadily kept in view from the first so to frame its provisions, that it should be suited to any class of Courts which might eventually be established for the administration of civil justice in this country, whether they should be amalgamated Courts or otherwise, and should admit of easy extension to them; in other words, that, *mutato nomine*, the Code should be capable of being worked just as well by a High Court, such as was proposed by Her Majesty's Commissioners to be established, as by the present Sudder and Zillah Courts; and that in any Act which might hereafter be passed for constituting a High Court or other Courts, a simple declaration that, where the words "Sudder Court" occurred, the High Court should be understood, and so on, should be all that was necessary. With regard to the amalgamation of the Supreme and Sudder Courts, he (Mr. Harington) had stated at the last meeting of the Council, that the question of uniting those two Courts had never been submitted for their consideration, and had consequently never been discussed by them, orders having, as he understood, been received from England prohibiting any immediate legislation on the subject. He had since made further enquiries with a view to ascertain the real state of the case, and he had found that, on the introduction

of the Bill "for simplifying the procedure of the Courts of Civil Judicature of the East India Company in the Presidency of Bengal," the Honorable and learned Mover of the Bill had stated that "the Council was aware that the Commissioners, meaning Her Majesty's Commissioners, had recommended that the Sudder Courts and Her Majesty's Supreme Courts should be amalgamated. But under the Statute 3 and 4 of William 4, chapter 85, Section XLVI, this Council had no power, without the sanction of the Honorable the Court of Directors, to abolish any Court which existed by virtue of a Charter from the Crown. The Council had received no authority from the Court of Directors to abolish the Supreme Courts, and, therefore, it was impracticable at present to effect the amalgamation desired. He had accordingly excepted that question from his Bill." Here then was the cause of the Council not having as yet done any thing towards the carrying out of that part of the scheme of Her Majesty's Commissioners which related to the amalgamation of the Supreme and Sudder Courts. It was unnecessary for him to tell the Council that the scheme of Her Majesty's Commissioners was limited to the union or amalgamation of the two Courts just mentioned, and did not propose to descend to any of the Courts below them. The Courts of the Zillah Judges, of the Principal Sudder Ameens, and of the Moonsiffs were to be continued as at present, except that some alteration was proposed in the amount of the jurisdiction now exercised by the Moonsiffs. Before resuming his seat, he felt that it was due to the Council that he should apologize for the digression from the subject in hand, of which, in making these remarks, he felt that he had been guilty, and he must also express a hope that in what he had said he had not been guilty of any disrespect towards His Excellency the Governor of Madras. On both public and private grounds his wish must be to treat His Excellency, whose friendship he had the privilege of enjoying after an acquaintance, which commenced more than thirty years ago, with all the respect and courtesy which were so justly due to his exalted position, high character, and private virtues; but having labored assiduously for several months with the other Members of this Council in preparing the new Code of Civil Procedure, and conscientiously believing as he did that that Code was calculated to confer very great benefits on the people of this country, he could not but deeply lament that His Excellency the Governor of Madras should have considered it to consist with his duty to the public of India to exert his powerful influence, for that he must be presumed to have done, to prevent the Code from coming into operation at the time appointed, thereby indefinitely postponing the introduction of this large and useful measure of reform, which had been so long and anxiously looked for—and that, too, not because there was anything bad or defective in the Code itself, for His Excellency admitted that it would conduce to speed and economy, two great requisites in any judicial system—but because for a brief interval, which might be shortened by a stroke of the pen, a small portion of the community, consisting chiefly of their own countrymen, were not to enjoy its benefits. But their duty in this matter was a respectful obedience to the commands of the Sovereign, an entire submission to Her Majesty's will and pleasure.

The Bill was read a first time.

MR. HARINGTON moved that the Standing Orders be suspended in order that the Bill might be read a second time.

MR. FORBES seconded the Motion, which was then agreed to.

MR. HARINGTON moved the second reading of the Bill.

MR. PEACOCK said that, in consequence of what had fallen from the Honorable Member for the North-Western Provinces, he thought it right to make a few observations. He had no doubt that he was expressing the feeling of the whole Council in stating that they were deeply indebted to the Honorable Member for the trouble he had taken in preparing the present Bill, which would have the effect of repealing numerous Sections of Acts and Regulations now lying scattered over several volumes, and which had been superseded by the Code of Civil Procedure recently

passed by the Council. He hoped with the Honorable Member that nothing would prevent that Code from taking effect. When he (Mr. Peacock) originally introduced the Bill, he explained to the Council that they were not competent, without the previous sanction of the Court of Directors, to abolish any Court which existed by virtue of a Charter from the Crown. It was not necessary, nor was it his intention on the present occasion, to discuss the question relating to the abolition of the Supreme and Sudder Courts, and to substitute for them a High Court of Judicature as proposed by Her Majesty's Commissioners. When that question should come regularly before the Council, he should be prepared to discuss it. At present he did not consider that the Council had the power to abolish the Supreme Courts. He would however remark that, according to the scheme proposed by Her Majesty's Commissioners, a Native Judge of ten years' standing might be appointed to hold a Session of Oyer and Terminer, and Europeans might be tried by him with the assistance of a jury, and if found guilty might be sentenced by him to punishment. He (Mr. Peacock) thought that such a scheme would cause great dissatisfaction.

With reference to the Minute of the present Governor of Madras, which had appeared in the public newspapers, he (Mr. Peacock) must be allowed to express his opinion that His Excellency had not acted with that decorum which the subject demanded, or treated this Council with that respect to which it was entitled. The Council had not passed that Code hastily nor without attentive consideration. The Government of Madras had been very ably represented both in the Select Committee and in the Council by the Honorable Member for that Presidency. Yet that Honorable Member had never offered any objection to its being passed unless accompanied by an amalgamation of the Supreme and Sudder Courts, neither did the Madras Government of the day offer any such objection. He (Mr. Peacock) did not therefore see what right a newly appointed Governor had in his official capacity —he (Mr. Peacock) would say nothing of his private capacity—to record a Minute, and to allow it to appear in the public newspapers, and thereby publicly to express a hope that Her Majesty would be advised to disallow an Act which, after due deliberation, had been passed by this Council, and had received the assent of the Governor General of India. If the Governor of Madras considered that the Code would not answer the purpose for which it was intended without providing at the same time for the amalgamation of the Courts, he should have sent his representation to this Council, and asked for the repeal of the Code so far as the Madras Presidency was concerned, or for amalgamation. But by publicly expressing, in a Minute recorded in his official capacity, a hope that Her Majesty would be advised to disallow the Act, he (Mr. Peacock) thought that the Governor of Madras had greatly exceeded his functions, and had assumed a tone not very respectful to this Council.

His Excellency did not object to the Code of Procedure so far as it went; on the contrary he thought that it would be conducive to the ends of justice and that the inhabitants of the Presidency Towns ought to have the benefit of it; but he expressed a hope that it would be disallowed by Her Majesty as it would indefinitely postpone the amalgamation of the Courts and the adoption of one uniform system of Procedure. He (Mr. Peacock) could not admit that such would be the case. It was quite consistent with the Code that amalgamation should take place, but he (Mr. Peacock) saw no reason why the Code should be disallowed in order that the disallowance might be used as a screw to compel this Council to pass an Act for amalgamating the Courts.

An Act for that purpose had not yet come under the consideration of the Council. On receiving authority from the Home Government for carrying that matter into effect, the Council would be prepared to give, and doubtless would give the subject full consideration. He thought it right to make these observations as he had introduced the Bill under a Resolution of the Supreme Government, leaving the formation of a High Court as a matter for separate consideration.

The Motion was carried, and the Bill read a second time.

MALABAR OUTRAGES.

MR. FORBES moved the second reading of the Bill "for the suppression of

outrages in the District of Malabar in the Presidency of Fort St. George."

MR. RICKETTS said, he was not prepared to take upon himself the responsibility of endeavoring to prevent the second reading of this Bill. But he must say that he was not satisfied with the proof which had been brought forward by the Honorable Member for Madras of the necessity of continuing the arbitrary and what he (Mr. Ricketts) could not but consider tyrannical rules which the Bill proposed to enact. No doubt there were times when arbitrary rules were extremely necessary, and there were also times when a tyrant was the best preserver of the public peace. But the question was, whether the state of the Mopla country was the same now as it was before 1854? The Honorable Member for Madras, in his speech on the first reading of the Bill and in his Statement of objects and reasons, had certainly shown that in 1854 there was very great necessity for such a law, and he, as well as those from whom he had obtained his information, had stated that "the temper of a great portion of the Mopla population was such that any relaxation of the law would be attended with considerable danger to the peace of the Province" But what were the facts? Since 1854 not a single outrage had occurred.

[Mr. Forbes. Mr. Conolly's murder in 1855.]

Now if the quiet of the Province was not to be regarded as a proof that such rules were no longer necessary, he (Mr. Ricketts) could not see what better proof could be adduced. Supposing this Province had been quieted by the influence of the Mopla Chiefs, as he (Mr. Ricketts) believed was partly the case, what would they say to the re-enactment not only of those rules but also of still more stringent rules? What would they say to the renewal of the stigma of there being one law for them and another law for their neighbors; and not only that, but additions to the stigma already existing.

According to Act XXIII of 1854, whenever an outrage was committed, it was "lawful for the Magistrate, with the sanction of the Governor in Council, to levy such sum of money as the Governor in Council shall authorize from all the Moplas within the Umshum or the several Umshums to which the perpetrator or perpetrators, or any one of such perpetrators of such outrages shall be found to belong, or wherever any such perpetrator shall have been resident at the time of the commission of the outrage." But this Bill proposed to empower the Magistrate to punish as accessaries the inhabitants of the Umshum where a fanatical outrage was committed. Now he thought it ought to be shown what necessity there was for such additional stringency. It might be necessary and politic that every one residing in a village where a crime was committed should be punished, but the necessity should be very clearly shown to justify such a rule. Supposing a party of Sailors were to come from Garden Reach and attack the Bengal Club and murder the Steward, what would the Honorable and learned Chairman and all those who lived in Russell Street, Middleton Street, and other Streets in the vicinity, say if they were called upon to pay a fine because they happened to live in the Umshum in which the Club was situated? All the inhabitants of Garden Reach would be liable under the law which seemed stringent enough without extending the liability to those who resided near the house attacked. Certainly circumstances in Malabar were not ordinary circumstances. But before the Council was asked to pass such a measure, it was reasonable to expect that some proof of its necessity should be presented.

He (Mr. Ricketts) observed in the annexures to the Bill that the Sessions Judge of Tellicherry recommended that the inhabitants of the Umshum in which a crime was committed, should be fined whenever it might be ascertained from presumptive evidence or otherwise that the crime was perpetrated with the knowledge and consent of the Mopla inhabitants of the neighborhood. The Honorable Member rejected altogether the suggestion as regards evidence of complicity, and made the neighbors punishable whether there be evidence or not!

He would next observe that Section X enabled a Magistrate to call upon the Mopla inhabitants of the village to which the perpetrator of an outrage belonged, or in which he resided, or to which he might flee, to deliver him up when called upon, under penalty of fine on failure to do so. This also was a new

rule, the necessity for which should be plainly shown.

Some time ago he (Mr. Ricketts) was constantly in communication with Military Officers and others who knew the Moplas well, and he learned from them that the fines levied from Moplas were not only excessive, but that they were often times levied from those against whom there was nothing that in other parts would be regarded as approaching proof of complicity. He had also been told that a feeling was gradually rising in Malabar, which, if not checked in time, might lead to great embarrassments. The Council must not suppose the Moplas to be a race of savages. Fanaticism aside, they were industrious, enterprising, independent, and indeed he wished that all our Asiatic subjects, fanaticism excepted, were like them. In trying to put down the outrages of a few, it behoved us to be very careful not to cause general discontent among 4,00,000 of our best subjects. He was not prepared, as he had already stated, to oppose the Motion for the second reading, but he hoped the Honorable Mover of the Bill, when the Bill came under the consideration of the Select Committee, would reconsider these new rules, and suit his Bill to the altered circumstances of the Province.

MR. FORBES said, he believed he should have been surprised if this opposition to the Bill had been made by any other Member than the Honorable Member who had just spoken. But as the Honorable Member had in conversation made known to him his objections, he was not quite unprepared for the opposition.

It appeared to him (Mr. Forbes) that the very ground of objection which had been taken to the Bill was a sufficient ground for passing it. In moving the first reading, he had shown that, before the passing of Act XXIII of 1854, Malabar was in so lamentable a condition that no European or Hindoo Inhabitant of that district felt his life worth half an hour's purchase. The result of the passing of that Act was that, since that time, the fanatical outrages by which the peace of the Province had been violently disturbed for several years previously had almost wholly ceased. Mr. Conolly's murder was an exceptional case, and was committed out of revenge.

The argument of the Honorable Member (Mr. Ricketts), however, stood thus. If Act XXIII of 1854 had failed in its operation, the Honorable Member would have had no objection to continuing it in force; but the Honorable Member objected to do so because it had been successful. It was generally supposed that "prevention is better than cure;" the Honorable Member, it would appear, thought otherwise. It was also an old proverb to shut the stable-door before the steed was stolen; the Honorable Member, however, said, "no, the Bill should not be passed for prevention, but for punishment." The more stringent provisions of the law in force had been introduced in Select Committee, among whom were the late Vice-President (Sir James Colvile) and an Honorable Member (Mr. Grant) who had recently retired from this Council on becoming Lieutenant-Governor of Bengal. He was sure that he need hardly say that no two Members of this Council were at all less likely to allow a measure which had a tendency to undue harshness or severity, or which stretched the law unduly against the liberty of the subject, than the late Honorable and learned Chief Justice and the present Lieutenant-Governor of Bengal. But what was the peculiar injustice or hardship of the measure? It did not say that any one in the peaceable pursuit of his ordinary calling, whatever it might be, should be interfered with; no one was to be subjected to any particular surveillance of the Police; as long as any one abstained from committing murder, or abetting the commission of murder by others, he was just as much at liberty to do what he pleased as any inhabitant of Calcutta. In Calcutta, if any man committed murder, he was liable to suffer death, and the reason why in Malabar the law was different, was because there death was no punishment to a Mopla who had committed a fanatical murder, but really was a premium upon crime. A Mopla fanatic sought death at the hands of those he considered to be unbelievers, and his whole end and object was to be killed.

The Honorable Member (Mr. Ricketts) had said that no reason had been given for the new provision introduced into the Bill, by which it was proposed

to make the Mopla inhabitants of the village within which a fanatical outrage was committed liable to fine in the same manner as the existing law had made the inhabitants of the village to which the perpetrator belonged or in which he had recently resided. If the Honorable Member had read the Statement of objects and reasons of the Bill, he would have found it stated in paragraph 17 that this addition to the scope of the law had been recommended by the Madras Government on the suggestion of the Local Officers. The Session Judge of Tellicherry had observed—

"In the case of the sanguinary outbreak which took place in January 1852 at Mattanoor, fifteen miles from Tellicherry, in which a substantial Brahmin householder and his entire family, fifteen persons in all, were murdered in one night, the perpetrators came from a distance, but it was well established that the murder was committed with the consent of the Mopla community generally in the neighborhood where the crime was perpetrated"

It seemed therefore quite as reasonable to make the accessories residing at the scene of outrage as amenable to the law as those who resided at the same place as the fanatic. That was the ground on which he had introduced that Section, and he humbly took leave to say that it was a substantial and a good ground.

In 1856, when a Bill was brought in to give effect to Act XXIII of 1854 from the time of its promulgation in Malabar, the late Honorable Member for Madras (Mr. Eliott) had said :—

"In the course of this enquiry it was clearly ascertained that the object of the attack upon Mr. Conolly was to inflict vengeance on him for the part he had taken in the banishment of the Tungal to which he had already adverted. 'The murderers,' said Mr. Collett, the Joint Magistrate, 'in more than one place declared this to be their motive.' 'It is now clear,' he observed, 'that, from an early date, they shaped their proceedings with a view to this end. It is from the knowledge that they were plotting to retaliate upon the person of the Chief Officer of Government for this offensive measure, that their caste-people generally conspired together to aid them, and preserved their secret inviolate, though it was literally known to scores, including women and children.' He might here mention that but shortly before this fatal event Mr. Conolly had received a communication from Captain Harris, the late Resident at Aden, warning him to be on his guard, as, from information that had been sent to him from Arabia, he apprehended that the Tungal was plotting some mischief against him."

Was that the state of things in which the Honorable Member opposite wished Civil Officers in Malabar to be placed?

He (Mr. Forbes) remembered, in the course of the debates which recently took place on the Bill for the recovery of rents, to have heard the Honorable Member (Mr. Ricketts) say, after congratulating the late Honorable Member for Bengal at the prospect of that Bill passing into law, that it would be a pleasing reflection for the Honorable Member for Bengal "to put under his pillow and go to sleep upon in a snug little room in the old country," that he had been instrumental in passing a Bill which would benefit about thirty millions of people. Would it be a pleasing reflection for the Honorable Member (Mr. Ricketts) to put under his pillow and go to sleep upon, that he had left a million Hindoos, men, women, and children, and all the Civil Officers of Government employed in Malabar, to the mercy of the Moplas who spared neither age nor sex? For his own part he (Mr. Forbes) must say that it would be a pleasing reflection to him that he had brought in a Bill for the purpose of protecting the lives of the peaceable inhabitants of the Province and the public servants of Government. Mr. Conolly had returned from the labors of the day and was sitting reading in his verandah, when four men came up with drawn swords and hacked him to pieces in the presence of his wife; and such scenes must again happen if the proposed law were not passed. If any portion of the Bill should be considered too stringent, it could be debated in Committee.

SIR JAMES OUTRAM said, he did not understand the Honorable Member opposite (Mr. Ricketts) to object to the renewal of the old law, but to the adoption of more stringent measures than were passed in 1854. The Honorable Member for Madras had admitted that, since the passing of the Act of 1854, only one outrage had been committed, in consequence of which it became necessary in 1856 to pass a supplementary Act which contained all that was considered necessary, and which had in practice proved quite

successful. But the Bill now introduced contained additional provisions, the necessity for which had not been shown; and he certainly thought with the Honorable Member opposite that still more stringent measures might have the effect of irritating a fanatical people like the Moplas into desperation, who as yet were found obedient to the law as it now stood. For these reasons, while he was prepared to support the renewal of the old law, he must decidedly object to the enactment of more stringent measures than those now in force.

MR FORBES said that, on the second reading of a Bill, the general principle only was under discussion. If the Honorable and gallant Member took exception to any particular Section in this Bill, opportunity to state his objection would be afforded when the Bill was in Committee.

The Motion was carried, and the Bill read a second time.

EXCLUSIVE PRIVILEGES TO INVENTORS.

The Order of the Day being read for the third reading of the Bill "for granting exclusive Privileges to Inventors"—

MR. PEACOCK said that, before he moved the third reading of this Bill, he thought it necessary that the Council should go into Committee for the purpose of adopting the amendment made therein by Her Majesty's Government. He should state very briefly for the information of Honorable Members who were not in the Council when the Bill was last under consideration, that, in consequence of instructions received from the Honorable the late Court of Directors, it was decided that this Bill should be sent home to England for the sanction of the Crown previously to its being passed. With this view it was considered advisable that the Bill should pass through all its stages except the third reading; and, accordingly, after the Bill had been considered and amended by a Committee of the whole Council, it was sent home for the sanction of Her Majesty. Consequently the Council were to some extent pledged to the passing of the Bill in the form in which it then stood. The Bill had now received the sanction of Her Majesty, except as to a slight verbal amendment. Before moving for the re-committal of the Bill, he would request the Clerk of the Council to read the Despatch of the Right Honorable the Secretary of State, conveying Her Majesty's sanction to the Bill.

The Despatch was read accordingly.

MR. PEACOCK then moved that the Bill be re-committed to a Committee of the whole Council.

Agreed to.

The Bill passed through Committee with the insertion of the words "in Council" after the words "Governor-General of India" in Section XVI, and the Council having resumed its sitting, was reported.

MR. PEACOCK moved that the Bill be read a third time and passed

The Motion was carried, and the Bill read a third time.

MR PEACOCK moved that Sir James Outram be requested to take the Bill to the Governor-General for his assent.

Agreed to.

REPEAL OF ACTS AND REGULATIONS.

MR. HARINGTON moved that the Bill "to repeal certain Regulations and Acts relating to the Procedure of the Courts of Civil Judicature not established by Royal Charter" be referred to a Select Committee consisting of Mr. LeGeyt, Mr. Forbes, Mr. Sconce, and the Mover, with an instruction to present their Report within six weeks.

Agreed to.

WARRANTS OF ATTORNEY AND COGNOVITS.

SIR CHARLES JACKSON moved that the Bill "to provide for the due execution of Warrants of Attorney to confess judgment and Cognovits" be referred to a Select Committee consisting of the Vice-President, Mr. Harington, and the Mover.

Agreed to.

SMALL CAUSE COURTS.

MR. HARINGTON moved that the Clerk of the Council be directed to address a letter to the Secretary to the Government of India in the Home Department, requesting that His Excellency

the Right Honorable the Governor-General in Council will be pleased to call upon the Local Governments of Madras, Bombay, the North-Western Provinces, and the Punjab, to furnish this Council, with as little delay as possible, with the following returns, and that those Governments be desired, at the same time, to submit any remarks that they, or the Officers subordinate to them, may see fit to make on the Bill "for the establishment of Courts of Small Causes beyond the local limits of the Supreme Courts of Judicature established by Royal Charter," as settled in Committee of the whole Council, and published for general information in the Calcutta Gazette of the 4th May Instant, namely :—

A return of the number of original suits instituted in the several Courts during the first four months of the current year, showing—

1. The number of cases in which the amount or value of the property in dispute did not exceed the sum of twenty Rupees, and what number of those cases would, by Section II of the Bill, have been cognizable under its provisions.

2. The number of cases in which the amount or value in dispute exceeded the sum of twenty Rupees, but did not exceed the sum of fifty Rupees, and what number of those cases would have been cognizable as above.

3. The number of cases in which the amount or value in dispute exceeded the sum of fifty Rupees, but did not exceed the sum of five hundred Rupees, and what number of those cases would have been cognizable as above.

4. The number of cases in which the amount or value in dispute exceeded the sum of five hundred Rupees, but did not exceed the sum of one thousand Rupees, and what number of those cases would have been cognizable as above.

5. The number of cases in which the amount or value of the property in dispute exceeded the sum of one thousand Rupees, but did not exceed the sum of five thousand Rupees and what number of those cases would have been cognizable as above.

6. The number of cases in which the amount or value of the property in dispute exceeded the sum of five thousand Rupees, but fell below the sum of ten thousand Rupees, and what number of those cases would have been cognizable as above.

7. The number of cases in which the amount or value in dispute was ten thousand Rupees and upwards, and what number of those cases would have been cognizable as above.

The number of regular appeals preferred during the same period, classified as above.

The number of special appeals admitted during the same period, classified as above.

MR. LEGEYT said, he did not rise to offer any opposition to any part of the Motion of the Honorable Member for the North-Western Provinces. He (Mr. LeGeyt) only desired to remark that objection might be taken to the Motion in the form in which it now stood. The Motion began as follows :—"That the Clerk of the Council be directed to address a letter to the Secretary to the Government of India in the Home Department, requesting that His Excellency the Right Honorable the Governor-General in Council, &c." Now it was not his intention to re-open the debate which had taken place on the Oaths question. He had since considered the question then mooted, and thought that the course which was followed upon that occasion was not quite consistent with the Standing Orders.

Standing Order No. 115 required that "all communications from the Legislative Council to the Governor-General, or to the Governor-General in Council, shall be made by Message to be taken by a Member of the Legislative Council." On the 25th August 1855, when the late Honorable Member for the North-Western Provinces moved that the President in Council be requested to favor this Council with a certain document, he also moved that one of the Members of the Council be requested to carry the Message to the President in Council. That he took to be not only in strict accordance with the Standing Orders, but in all respects a more fitting course than the one now proposed by the Honorable Member for the North-Western Provinces. This Council being a part and parcel of the Council of the Governor-General of India, he did not think that the proposed course was a becoming one ; and as they had on record precedents which appeared to him to be strictly in accordance with the Standing Orders, it seemed to him that those precedents should be adhered to. He would therefore propose to substitute for the words above quoted the words "that a Message be taken to the Right Honorable the Governor-General, requesting that His Excellency, &c."

MR. HARINGTON said, he had no objection to offer to the amendment proposed by the Honorable Member for Bombay, and was willing that the words suggested by him should be substituted for the words to which he had taken exception. On a former occasion the Clerk of the Council had been directed on his (Mr. Harington's) Motion to address a letter to the Secretary to Government in the Home Department for the purpose of obtaining some information required from his Office, and no objection had been urged by any Honorable Member to the mode of communication then followed, and he had therefore proposed that they should adopt the same mode on the present occasion. He had certainly overlooked the Standing Order referred to by the Honorable Member for Bombay; but even had he (Mr. Harington) adverted to it, he thought he should have had some doubts as to its applicability in the present instance. But if the Council were of a different opinion, he was quite prepared to alter his Motion so as to make it correspond with the order in question.

The Motion was by leave withdrawn.

MR. HARINGTON then proposed the same Motion in an altered form. The amended Motion commenced as follows :—

"That the Vice-President be requested to take a message to His Excellency the Right Honorable the Governor General in Council, requesting that His Excellency in Council," &c.

The Motion was carried.

REGULATION OF HACKNEY CARRIAGES.

MR. LEGEYT gave notice that he would, on Saturday next, move the first reading of a Bill "for the better regulation of Hackney Carriages in certain Towns."

MADRAS POLICE.

MR. FORBES moved that Mr. Sconce be added to the Select Committee on the Bill "for the better regulation of the Police within the Territories subject to the Presidency of Fort St. George."

Agreed to.

REGISTRATION.

Mr. Forbes moved that Mr. Sconce be added to the Select Committee appointed to take into consideration a communication from the Madras Government, suggesting improvements in the present system of registering assurances, and submitting the draft of an Act for affording protection to rights on property.

Agreed to.

MALABAR OUTRAGES.

MR. FORBES moved that the Bill for the suppression of outrages in the District of Malabar in the Presidency of Fort St. George "be referred to a Select Committee consisting of Mr. Harington, Mr. Sconce, and the Mover.

Agreed to.

MADRAS POLICE.

MR. FORBES moved that certain papers received by him from the Madras Government be laid upon the table, and referred to the Select Committee on the Bill "for the better regulation of the Police within the Territories subject to the Presidency of Fort St. George."

Agreed to.

The Council adjourned.

Saturday, May 21, 1859.

PRESENT:

The Hon'ble Barnes Peacock, *Vice-President*, in the Chair.

Hon. Lieut.-Genl. Sir James Outram,	H. Forbes, Esq.,
P. W. LeGeyt, Esq.,	Hon. Sir C. Jackson, and
H. B. Harington, Esq.,	A. Sconce, Esq.

EXCLUSIVE PRIVILEGES TO INVENTORS.

THE VICE-PRESIDENT read a Message, informing the Legislative Council that the Governor-General had assented to the Bill "for granting exclusive privileges to Inventors."

PUBLIC CONVEYANCES.

THE CLERK presented a Petition from certain Inhabitants of Calcutta,

praying for an Act to regulate the rates of hire for Conveyances.

MR. LEGEYT moved that the Petition be printed.

Agreed to.

MR. LEGEYT begged to move the first reading of a Bill "for regulating public conveyances in the towns of Calcutta, Madras, and Bombay, and the several stations of the Settlement of Prince of Wales' Island, Singapore, and Malacca."

He said, he was led to believe, from representations which had been made by persons whose opinions were entitled to some respect, that the want of a law of this kind was severely felt in Calcutta. It was obvious to any one who traversed the streets of this City, that the employment of hackney carriages was very general; and the constant intercourse between the numerous ships in the river and the shore was necessarily carried on by means of hired boats. The complaints were numerous against the extortion and misconduct of the class of persons who were employed as drivers of these conveyances, and who navigated the boats. At the same time it was not reasonable to suppose that the cause of complaint was entirely on one side; and in providing for the convenience and protection of the public, he thought it was equally necessary to provide for the protection of the owners against oppression and fraud on the part of the hirers.

In their Annual Report for 1857, the Municipal Commissioners had stated:—

"Whilst on this subject, we beg to bring to your Honor's notice the imperative necessity which exists for putting a stop to the nefarious monopoly carried on by native livery stable-keepers, and for placing the same under regulations as exist in all the large towns of Europe—in London, in Paris, in Vienna; in fact, in every capital of Europe. The places or stands for conveyances on daily hire, as well as the rates of fare, are fixed by the authorities, and the time has arrived when these wholesome provisions should also be adopted in Calcutta. The absence of all regulations with regard to fare has been productive of a sort of monopoly on the part of native livery stable-keepers, which has entailed not only much inconvenience but considerable hardship upon a number of strangers, who, in the course of the year, passed through this town. Owing to the general rise in the cost of food, and also the increased demand for hired carriages, the livery stable-keepers have raised the rates of fare of a gharree with two horses to three Rupees, and of a gharree and one horse to two Rupees per diem. Nobody can find fault with these rates, but what people complain of, and not without reason, is, that full fares are insisted upon, whether the conveyance be used for half an hour only, or for the whole day, and that, not unfrequently, when it does not suit the convenience of the drivers to move out of their stables, they refuse altogether to bring a conveyance.

"There have likewise been many complaints about the imposition practised upon visitors coming into town from the surrounding districts. From what has been reported to us, it appears that the drivers in many instances demand payment in advance, and that, in fact, they refuse to bring the conveyance unless the hire be paid first. They then take the party to the place where directed, but whilst the person hiring the carriage is paying a visit, or making purchases at a shop, the driver and carriage abscond. These complaints being on the increase, we consider it absolutely necessary that a stop be put to such malpractices on the part of livery stable-keepers. We would therefore propose that the hire of all similar conveyances be fixed by a tariff, regulating the rates of fare, conduct of drivers, and stands for vehicles, on the same principle as is done in London and Paris. Each hired conveyance should be compelled to exhibit, in a conspicuous place, within, the tariff, and any extortion should be liable to a heavy penalty."

It appeared that this Report of the Municipal Commissioners had been referred for the opinion of the late Honorable Member for Bengal, who did not think that the necessity for legislation had been made out Mr. Currie remarked:—

"The question of fixing a tariff of fares for carriages let on hire is one which hardly falls within the scope of your present requisition, which speaks only of necessary amendments of the law. The moderate rates of charge, and the active competition which keep down those rates, do not, I think, indicate any necessity for the action of Government in the very questionable direction of an interference with the natural adjustment of wages and profits."

He (Mr. LeGeyt) believed that nothing more was done upon this Report by the authorities here. But the "natural adjustment" referred to by Mr. Currie did not appear to have come about, for a numerously signed petition had just been presented to the Council, praying for relief from this public

grievance. In addition to this, the Commissioner of Police had communicated with him on the subject, and had expressed it, as his opinion, that a law to regulate hackney carriages was absolutely required, and, in asking this, he said he only demanded what was accorded in almost every city and town where legislation had been established. Mr. Wauchope remarked :—

"I believe some law regulating the rates of hackney carriages here to be absolutely required, and that, to the best of my knowledge, it is almost the only civilized town, or professing to be civilized, in which the hackney carriages are not placed under Police restrictions."

In Bombay there had been a law, though an imperfect one, to regulate such conveyances for the last eighteen years, namely, Act IV of 1841, which had worked well as far as it went; but he proposed by this bill, if it should pass into law, to repeal that Act and to give Bombay the advantage of a more modern system of regulating such matters.

In Madras he believed there was no law on the subject, nor was it within his knowledge that any representation had ever been made from that city, stating the necessity for such a measure. He had, however, included that Presidency town within the scope of the Bill, as so large and populous a city would, like other places, stand in need of such an Act, and he agreed with Mr. Wauchope in thinking that in all large towns an Act of the kind was very necessary.

The Straits Settlement had also felt the necessity for a regulation on the subject. The Governor of that place had lately submitted the Draft of an Act founded on Act IV of 1841 for Bombay. In submitting this Draft Act, Mr. Blundell said :—

"The Act is similar in its provisions to Act IV of 1841, which apparently has never been repealed, though some of the provisions of that Act seem inconsistent with those of Acts XIII and XIV of 1856.

"I am not aware whether Acts similar to IV of 1841 exist for the regulation of vehicles let to hire in Calcutta and Madras, but most certainly the want of some enactment of the kind is severely felt here, where unlimited license reigns on the part of the charges and imposition on strangers of the drivers of carriages and the tindals of boats.

"I have always been alive to the necessity of some such enactment as this, and have made frequent representations on the subject; but as nothing was ever done to remedy the evil, I presumed it was not intended that the subject should be legislated on. Seeing, however, that Bombay enjoys a regulating Act, and presuming that Calcutta and Madras have some old law still in existence to a similar effect, I am emboldened to solicit the consideration of the Council towards placing these Settlements in a similar position."

Upon this authority he (Mr. LeGeyt) had placed the Straits' Settlement within the provisions of the Bill.

His (Mr. LeGeyt's) own convictions were entirely with those who were desirous of legislation on this subject. He well remembered the trouble and annoyance which prevailed in Bombay prior to the passing of Act IV of 1841, and the relief which that Act afforded, not only to the hirers of carriages and boats, but in many instances to the proprietors of the conveyances themselves, who, till the passing of that Act, had to apply to a Civil Court for the recovery of their just dues.

With these facts before him, he (Mr. LeGeyt) thought that a sufficient case had been made out to warrant the passing of such a Bill; and in bringing it forward, he had ascertained that the Honorable Member for Bengal did not consider that he (Mr. LeGeyt) was trespassing upon his manor. Whether he (Mr. Sconce) was more favorable to the measure itself than his Honorable predecessor, he (Mr. LeGeyt) did not know; but he hoped he would not, when the time came, ask them to wait any longer for the "natural adjustment of wages and profits" as a relief from the present inconvenience.

Mr. LeGeyt proceeded briefly to notice the several provisions of the Bill. With reference to Section IX, he said he had left the fixing of the fares to the Commissioners of Police at Calcutta and Madras, to the Petty Sessions at Bombay, and to the Quarter Sessions in the Straits Settlement, subject, however, to the confirmation of the local Governments. He did not think the Council was in a position to legislate on so purely local a point, and no evidence or information which it could obtain would enable it to do so, so well as the authorities on the

spot The sanction of the local Government would, he thought, be a sufficient guarantee that the power would be exercised with proper discretion.

With regard to Section XXIII, it might possibly be objected that unoffending parties, the owners of conveyances, were made criminally responsible for the doings of their servants Mr Wauchope had informed him (Mr. LeGeyt) that he considered it essentially necessary in Calcutta that the authorities should know the proprietors, and that the proprietors should be responsible for the acts of their servants His (Mr. LeGeyt's) own experience in Bombay induced him fully to concur in this opinion. The sense of this responsibility would force the owner to get a decent man for a driver, in the same manner as the knowledge that registration would not be permitted to an unsafe conveyance would compel the owner to provide safe conveyances and proper horses.

Section XXVI, which empowered the Commissioner of Police, in certain cases, to refuse or cancel registration, would enable that authority to control and check abuses, and to maintain efficiency and safety in the condition of the conveyances This principle was sanctioned in Section LXXIX of Act XIII of 1856 in regard to boats; it was also fully recognized in Act IV of 1841 at Bombay, and was, he thought, essential to the well-working of the system.

The Bill was read a first time.

POWERS OF SESSION JUDGES.

MR HARINGTON gave notice that he would, on Saturday next, move the first reading of a Bill to enable Session Judges to pass sentence in certain cases without reference to the Sudder Court.

RIVER SIGNALS.

MR SCONCE gave notice that he would, on the same day, move the first reading of a Bill to enforce signals of the names of vessels passing signal stations established within the river Hooghly and the branches thereof

CATTLE TRESPASS.

MR. LEGEYT moved that Mr Sconce be added to the Select Committee on the Bill "to amend Act III of 1857 (relating to trespasses by Cattle)."

Agreed to.

FRAUDULENT TRANSFERS AND SECRET TRUSTS.

MR. LEGEYT moved that Mr Sconce be added to the Select Committee on the Bill "for the prevention of fraudulent transfers of Property and of Secret Trusts."

Agreed to.

POLICE (PRESIDENCY TOWNS AND STRAITS SETTLEMENT).

MR LEGEYT moved that Mr Sconce be added to the Select Committee on the Bill "to amend Act XIII of 1856 (for regulating the Police of the Towns of Calcutta, Madras, and Bombay, and the several stations of the Settlement of Prince of Wales' Island, Singapore, and Malacca)."

Agreed to.

RAILWAY CONTRACTORS AND WORKMEN.

MR LEGEYT moved that Mr Sconce be added to the Select Committee on the Bill "to empower Magistrates to decide certain disputes between contractors and workmen engaged in Railway and other works."

Agreed to

APPEALS.

MR HARINGTON moved that Mr Sconce be added to the Select Committee on the Bill "to provide for the more speedy disposal of Appeals in cases appealable to the Sudder Court and of applications for Special Appeals"

Agreed to.

MADRAS POLICE.

MR FORBES said, at the last Meeting of the Council he moved that Mr Sconce be added to the Select

Committee on the Bill "for the better regulation of the Police within the Territories subject to the Presidency of Fort St. George." He was under the impression at the time that the late Member for Bengal was upon that Select Committee, and he had therefore proposed to substitute his successor for him. But he now found that the Select Committee on that Bill already contained its full complement of Members, and that he had labored under a misapprehension in supposing that the late Honorable Member for Bengal was one of them. He now begged to move that Mr. Peacock be relieved from that Committee.

Agreed to.

The Council adjourned.

Saturday, May 28, 1859.

PRESENT :

The Honorable B. Peacock, *Vice-President*, in the Chair.

Hon. Lieut.-General Sir J. Outram,	H. Forbes, Esq.,
P. W. LeGeyt, Esq.,	Hon. Sir C. R. M. Jackson, and
H. B. Harington, Esq.,	A. Sconce, Esq.

APPEALS.

The Clerk presented a Petition from the Indigo Planters' Association against the Bill "to provide for the more speedy disposal of appeals in cases appealable to the Sudder Court, and of applications for special appeals."

MR. SCONCE moved that the above Petition be referred to the Select Committee on the Bill.

Agreed to.

The Clerk also presented a Petition from the British Indian Association against the same Bill.

MR. SCONCE moved that the above Petition be referred to the Select Committee on the Bill.

Agreed to.

TRIALS BY SESSIONS JUDGES.

MR. HARINGTON moved the first reading of a Bill "to enable Sessions Judges to pass sentence in certain cases without reference to the Sudder Court." He said, a Bill "to provide for the more speedy disposal of appeals in cases appealable to the Sudder Court, and of applications for special appeals," was, the Council would recollect, brought in by his Honorable friend, the late Member for Bengal, on the last day on which he sat as a Member of that Legislature. The object of that Bill, which, after being read a second time, was now under the consideration of a Select Committee, whose report upon it would be due in the course of a few days, was to afford relief to the Sudder Courts at Calcutta and Agra on the Civil side. The Bill, of which he was now to move the first reading, was introduced with a view still further to relieve those Courts, though on the Criminal side, and this it proposed to do by enabling Sessions Judges to pass sentence in certain cases which, under the law, as it now stood, required to be referred for the final orders of the Nizamut Adawlut. He had reason to know that the late Honorable Member for Bengal originally intended to include in the Bill brought in by him the whole of the provisions contained in the Bill which he (Mr. Harington) had prepared. The Sudder Court at Calcutta recommended, he believed, that those provisions should be introduced into that Bill, but as it was fully expected that the new Code of Criminal Procedure, which embraced all the modifications of the existing Regulations and Acts relating to the reference of Criminal trials to the Sudder Courts, now proposed for adoption, would soon become law, the late Honorable Member for Bengal considered it unadvisable to anticipate the new Code in the Bill brought in by him, and he, accordingly, confined the provisions of that Bill to the business coming before the Sudder Court on the Civil side. It was proper, therefore, that he (Mr. Harington) should explain why, instead of following the example set him by the late Honorable Member for Bengal, and waiting patiently for the passing of the new Code of Criminal Procedure, he was anxious to hasten matters, and had considered it necessary to bring in this Bill at the present time. The explanation which he had to offer to the Council on this point was this. Honorable Members were aware that considerable disappointment

had been felt at home in consequence of no provision having been made in the new Code of Civil Procedure, which was lately passed by the Council, for amalgamating the Supreme and Sudder Courts according to the scheme proposed by the original framers of that Code, and that so much importance was attached to the amalgamation of those two Courts, and to their formation into a single high Court, that it was considered desirable in some quarters that the Codes of Civil and Criminal Procedure should be stayed until the scheme of amalgamation was matured and could be embodied therein. He believed he was not wrong in saying that a wish to this effect had been expressed, at least such was generally reported to be the case. The reason why nothing had as yet been done by this Council towards carrying out that part of the scheme of Her Majesty's Commissioners, which related to the amalgamation of the Supreme and Sudder Courts, had already been mentioned more than once within the last few days, and it was unnecessary for him to repeat now what was then said.

With respect to the new Code of Criminal Procedure, he wished to observe that, although the Select Committee, to which the Bill containing that Code was referred, had made their report, and the Bill was now ready to be committed to the whole Council, he thought it very probable that the Honorable and learned Vice-President, who had charge of the Bill, would not consider himself justified in going on with it at present in the face of the wish to which he had alluded, but that he would prefer to wait for further instructions from home, which might not be received for a considerable time. He (Mr. Harington) was unable to say what course the Honorable and learned Vice-President intended to pursue in existing circumstances; but should he have decided not to proceed with the Bill under his charge at present, he thought the Council at large would concur in the propriety of that decision, for, independently of the desire which they must all feel to defer, as far as lay in their power, to the wishes of the Home authorities in this matter, it was obvious that it would be far better that there should be a little delay in the passing of the Code than that they should run the risk of the result of their labors, after they had been brought to a close here, being eventually disallowed at home. It was not possible for them to stay proceedings in respect to the new Code of Civil Procedure, because the Bill, in which that Code was contained, had received the assent of His Excellency the Right Honorable the Governor General before they were made aware of the fact that any wish of the nature of that mentioned had been expressed, and in so far, therefore, as the Civil Code was concerned, they could only await Her Majesty's pleasure. Then, in addition to the obstacle which had been so unexpectedly raised up in the way of their proceeding with the new Code of Criminal Procedure, he might state that the Select Committee, to which the Bill containing that Code was referred, had recommended such very material and important alterations in it, that, in the event of their recommendations being adopted by the Council at large, he thought it very probable that it would be considered proper to republish the Bill for general information before it was read a third time, which would cause a further delay of several weeks; and that, moreover, the references made in the new Code of Criminal Procedure to the new Penal Code were so numerous, and the two Codes were so intimately connected with one another, that it seemed desirable that they should pass into law simultaneously, but the Select Committee on the Penal Code had not as yet been able to present their report. Considerable progress had been made in the work of revision committed to them, but much remained to be done, and it was, at present, quite impossible even to hazard a conjecture as to when the new Penal Code would come into operation. Taking all these circumstances together, it certainly appeared to him (Mr. Harington) that, if the amendments of the existing Code of Criminal Procedure proposed in the Bill which had been prepared by him, were really necessary and likely to prove beneficial, it would be better to pass them at once, particularly as they chimed in, as he had stated, with the new Code of Crimi-

nal Procedure, rather than wait for an indefinite period, or until the new Code of Criminal Procedure should become law, which might not happen this year. He trusted that he had said enough to justify the course which he was pursuing in bringing in the present Bill, and that in its introduction he should not be considered to be unnecessarily occupying the time of the Council. He would now proceed to notice briefly the cases in which the Bill proposed that Sessions Judges should have power to pass sentence without reference to the Sudder Court.

These were, *first*, cases of rape. According to the law in force in Bengal and Madras, Sessions Judges had no power to pass sentence on a conviction for this offence, but were obliged to refer their proceedings for the orders of the Sudder Court. No doubt rape was a very heinous crime, and there was reason to fear that it was one of very common occurrence in some parts of India; but he (Mr. Harington) did not consider it to be of a more heinous character than several other offences, the perpetrators of which might, on conviction, be punished by Judges of Sessions without reference to the Sudder Court. In support of this opinion, he might observe that the punishment awarded by the Sudder Court, in cases of rape referred for their orders, very rarely exceeded what the Sessions Judges were competent to adjudge in cases punishable by them under the general Regulations, that is, seven years' imprisonment with hard labor in irons. A Bill to enable Sessions Judges to pass sentence in cases of rape was brought in by the late Honorable Member for Bengal so far back as the 8th March 1856, and what had just been mentioned by him on the subject of the punishment of the crime was one of the reasons assigned by the Honorable Mover of the Bill for its introduction. The Bill was read a second time on the 15th March of the same year, and was referred in the usual course to a Select Committee, but no report was made, and on the 20th November last the Committee was discharged on the motion of the late Honorable Member for Bengal, and the papers were ordered to be referred to the Select Committee on the Criminal Procedure Code.

The next class of cases to which the Bill referred were cases of forgery and perjury. The Regulations of Bengal and Madras fixed a minimum punishment for these two offences, any thing short of which the Sessions Judges were precluded from awarding on conviction; but if in any case the punishment so fixed appeared too severe, the Sessions Judges were required to refer their proceedings for the orders of the Sudder Court, stating at large the grounds on which they considered a mitigation of punishment necessary. In the cases referred to the Sudder Court under this rule, the Court were obliged to revise the proceedings, not only with a view to ascertain whether the ground on which a remission of punishment was recommended was sufficient to justify their interference, but also whether adequate proof existed in the record to sustain the conviction, which of course occupied a good deal of time. But if the Sessions Judges could be safely entrusted with power to award punishment in cases of forgery and perjury, extending in some cases to sixteen years' imprisonment in banishment, it certainly seemed unreasonable to impose upon the exercise of their discretion the restriction just mentioned, particularly as it might be relaxed on their recommendation. He might add that the Select Committee on the new Penal Code were opposed to any minimum of punishment being declared by law, and they had recommended that the Code should be altered accordingly.

The last class of cases to which the Bill related were cases falling within the provisions of Clause 1 Section IV Regulation VI. 1832. That Clause declared that "in all trials in which recourse might be had to the provisions of the Regulation, the futwa of a Mahomedan law officer was unnecessary, and might be dispensed with at the option of the Court, anything in the existing Regulations to the contrary notwithstanding; provided that, whenever the futwa was dispensed with, and the crime of which the prisoner was convicted was one which the Judge was not specifically empowered by the Regulations to punish, he should not proceed to pass sentence, but should refer the case for the consideration of the Nizamut Adawlut, stating at length in

the proceedings the opinion of the punchayet, assessors, or jury, and his own opinion as to the crime proved, and the nature and extent of the punishment which should be awarded"

The effect of the proviso which he had just read was to preclude the Sessions Judges in those Districts of the Bengal Presidency, in which there was no Mahomedan law officer, from passing sentence in cases of child-stealing, which were very numerous, abduction, exposure of new-born infants, conspiracy, and many other cases the offences charged in which were not of a more heinous character than those just mentioned, and on a conviction for which a more severe punishment than seven years' imprisonment, to which extent, as already noticed, the Sessions Judges had power to pass sentence under the general Regulations, was seldom, if ever, awarded, and to devolve upon the Sudder Court the necessity of revising the proceedings of the Court below, and of coming to a decision thereon The Sudder Court at Agra had again and again recommended the rescission of this rule and the substitution for it of a provision that, in cases of the nature of those mentioned, where the offence charged had been declared punishable by a conviction and sentence of the Nizamut Adawlut, no reference should be necessary to that Court, but that the Session Judges, on conviction, should be at liberty to pass sentence within certain limits, although the offence was not one which those Officers were specifically empowered to punish by any Regulation. This was what was now proposed to be done. In suggesting this alteration of the law, the Sudder Court justly observed that the effect of the existing rule was to devolve upon the Sudder Court the final determination of a large number of cases of comparatively little importance, without, as the Court believed, any commensurate public benefit

He (Mr Harington) was quite prepared to admit that the amount of relief which would be afforded to the Sudder Courts at Calcutta and Agra, by the introduction of the present Bill, would not be very great, but still it would be something It was scarcely necessary for him to say that every minute of the time of the Judges of the Sudder Court was very valuable, and all would agree that the time of the Judges of that Court should not be occupied with work of comparatively little importance. Every hour saved from the disposal of the cases to which the present Bill related, would be so much time gained for other more important business; and as they had recently been called upon to pass a law for the relief of the Sudder Courts at Calcutta and Agra, one of the provisions of which would have a retrospective effect in respect to certain classes of cases which might be depending on the date on which the Bill should come into operation, he thought they were bound to relieve those Courts of all work which, from its nature, could be sufficiently well performed by the subordinate Courts, and for the devolvement of which upon the Sudder Courts no special or sufficient reason appeared to exist. It was upon these grounds that he ventured to commend this Bill to the favorable consideration of the Council, and to express a hope that they would give their assent to the motion which he was about to make. He would only add that the Bill, as drawn, applied to the Presidency of Bengal alone, but such parts of it as related to the crimes of rape, perjury, and forgery, could hereafter be extended to Madras, if the authorities at that Presidency should express a wish that it should be so extended.

The Bill was read a first time

SIGNALS (RIVER HOOGHLY).

MR. SCONCE moved the first reading of a Bill "to enforce Signals of the names of vessels passing Signal Stations established within the River Hooghly and the branches thereof." He said that the Bill which he now had the honor to lay before the Council originated in a reference from the Lieutenant-Governor of Bengal. The object of the Bill was simply to compel Masters of vessels to report or signalize the names of their vessels when they neared any Telegraphic Station. On a late occasion a China steamer anchored at Saugor for nearly a whole day; and although the Pilot on board suggested to the Master the necessity of report-

ing her arrival, the arrival of the vessel remained unannounced.

Under these circumstances, it had been considered necessary that signalling by vessels should, by law, be enforced. The suggestion had been made by the Superintendent of Marine; and the Lieutenant-Governor of Bengal, and the Chamber of Commerce to whom a reference was made on the subject, had given their support to Captain Rennie's proposition.

The Bill was very short and simple. The first Section provided that the Master of every inward-bound vessel belonging to a British subject, or sailing under British Colors, on nearing a Signal Station, should, on the requisition of the Pilot in pilotage charge of his vessel, signalize the name of the vessel by the usual numbers, and that every Signal so made should continue hoisted till answered from the Station to which it was addressed.

The second Section imposed a penalty for neglect of that injunction; and the third Section provided that this Act should be taken as part of the Ports Act XXII of 1855.

He supposed, generally, that there could be no doubt of the right of the Legislature to pass such a law when the interests of the public rendered it necessary. It was not always easy nor, as a general principle, was it on this occasion necessary, to draw the line by which, as regards the legitimate interference of the Legislature, the rights to be enjoyed by private parties without interruption should be distinguished from those in which the public had an interest. But it appeared to him that there were several considerations which might be urged in support of this Bill. Looking, generally, to the connection subsisting between navigators and the public whom they in a great measure served, it seemed to him that Masters of vessels might very reasonably be compelled to serve the purpose for which this Bill was intended to provide. In coming to this Port they had the protection of the law, the benefit of the Port itself, and of whatever advantages arose from the system of administration therein established. In other respects, they might be regarded as public traders. They offered themselves to the public, although on a large scale, as carriers of goods and communications; and in return for the advantages which they derived from the public, some acknowledgment was due from them to the public. But, looking more particularly to the vessels engaged in the China Trade, it may be fairly said that the position which they occupied tended to exclude others from occupying the same line, and thus the advantages which they possessed partook in some degree of the nature of a monopoly, and for that reason also it appeared to him very proper that they should be required to disclose the fact of their return to Port.

The Bill was read a first time.

PORTS AND PORT-DUES.

MR. FORBES moved the first reading of a Bill "to amend Act XXII of 1855 (for the regulation of Ports and Port-dues.)" He said that Act XXII of 1855 was passed to provide for the safety of vessels and the convenience of traffic in the several Ports in India and the Straits, for the improvement and maintenance of Ports, and for the levy of Port-dues in order to defray the cost of such improvements and maintenance. It provided for the levy by distraint of all claims of Government on account of Port-dues, as long as the vessel, in respect of which they were leviable, remained at anchor in the harbour, if the Master of the vessel refused to pay them on demand. But no provision was made for the collection at one Port of the claims due at another Port, if any vessel should leave the harbour without settling the claims. Experience had shown that such a provision was necessary, and instances had lately occurred on the Western Coast of India of vessels leaving their Port without satisfying the claims of Government on account of Harbour-dues.

The object of this Bill was to give the authorities, who, by Act XXII of 1855, had power to collect Harbour-dues for the Port at which they were employed, the same power to collect the dues which any vessel might have left undischarged at any other Port.

But as any Master of a vessel,

who would attempt to defraud the Government by wilfully leaving a harbour without payment of the Port-dues, would, if no penalty attached to the attempt, always take his chance of evading the demand, it was further provided that, unless it were shown that departure was caused by stress of weather or other circumstances over which the Master had no control, his departure should be considered to have been wilful, and he would be liable to a penalty in addition to the Port-dues which he attempted to evade.

If this Bill, and the Bill which had just been introduced by the Honorable Member for Bengal, should pass a second reading, he (Mr. Forbes) proposed to communicate with that Honorable Gentleman privately, in the hope that both Bills might be incorporated into one in Select Committee, thus avoiding the inconvenience which would arise from there being before the Council two Bills to amend the same Act.

With these observations he begged to move the first reading of the Bill.

The Bill was read a first time.

PENAL CODE.

Mr. Forbes moved that a communication received by him from the Madras Government be laid upon the table and referred to the Select Committee on "The Indian Penal Code."

Agreed to.

The Council adjourned.

This leaf to be cancelled on the issue of Part VI.

ing her arrival, the arrival of the vessel remained unannounced.

Under these circumstances it had been considered necessary that signalling by vessels should, by law, be enforced. The suggestion had been made by the Superintendent of Marine; and the Lieutenant-Governor of Bengal, and the Chamber of Commerce to whom a reference was made on the subject, had given their support to Captain Rennie's proposition.

The Bill was very short and simple. The first Section provided that the Master of every inward-bound vessel belonging to a British subject, or sailing under British Colors, on nearing a Signal Station, should, on the requisition of the Pilot in pilotage charge of his vessel, signalize the name of the vessel by the usual numbers, and that every Signal so made should continue hoisted till answered from the Station to which it was addressed.

The second Section imposed a penalty for neglect of that injunction; and the third Section provided that this Act should be taken as part of the Ports Act XXII of 1855.

He supposed, generally, that there could be no doubt of the right of the Legislature to pass such a law when the interests of the public rendered it necessary. It was not always easy nor, as a general principle, was it on this occasion necessary, to draw the line by which, as regards the legitimate interference of the Legislature, the rights to be enjoyed by private parties without interruption should be distinguished from those in which the public had an interest. But it appeared to him that there were several considerations which might be urged in support of this Bill. Looking, generally, to the connection subsisting between navigators and the public whom they in a great measure served, it seemed to him that Masters of vessels might very reasonably be compelled to serve the purpose for which this Bill was intended to provide. In coming to this Port they had the protection of the law, the benefit of the Port itself, and of whatever advantages arose from the system of administration therein established. In other respects, they might be regarded as public traders. They offered themselves to the public, although on a large scale, as carriers of goods and communications; and in return for the advantages which they derived from the public, some acknowledgment was due from them to the public. But, looking more particularly to the vessels engaged in the China Trade, it may be fairly said that the position which they occupied tended to exclude others from occupying the same line, and thus the advantages which they possessed partook in some degree of the nature of a monopoly, and for that reason also it appeared to him very proper that they should be required to disclose the fact of their return to Port.

The Bill was read a first time.

PORTS AND PORT-DUES.

MR. FORBES moved the first reading of a Bill "to amend Act XXII of 1855 (for the regulation of Ports and Port-dues.)" He said that Act XXII of 1855 was passed to provide for the safety of vessels and the convenience of traffic in the several Ports in India and the Straits, for the improvement and maintenance of Ports, and for the levy of Port-dues in order to defray the cost of such improvements and maintenance. It provided for the levy by distraint of all claims of Government on account of Port-dues, as long as the vessel, in respect of which they were leviable, remained at anchor in the harbour, if the Master of the vessel refused to pay them on demand. But no provision was made for the collection at one Port of the claims due at another Port, if any vessel should leave the harbour without settling the claims. Experience had shown that such a provision was necessary, and instances had lately occurred on the Western Coast of India of vessels leaving their Port without satisfying the claims of Government on account of Harbour-dues.

The object of this Bill was to give the authorities, who, by Act XXII of 1855, had power to collect Harbour-dues for the Port at which they were employed, the same power to collect the dues which any vessel might have left undischarged at any other Port.

But as any Master of a vessel, who would attempt to defraud the Government by wilfully leaving a harbour without payment of the Port dues, would, if no penalty attached to the attempt, always take his chance of evading the demand, it was further provided that, unless it were shown that departure was caused by stress of weather or other circumstances over which the Master had no control, his departure should be considered to have been wilful, and he would be liable to a penalty in addition to the Port dues which he attempted to evade

If this Bill, and the Bill which had just been introduced by the Honorable Member for Bengal, should pass a second reading, he (Mr Forbes) proposed to communicate with that Honorable Gentleman privately, in the hope that both Bills might be incorporated into one in Select Committee, thus avoiding the inconvenience which would arise from there being before the Council two Bills to amend the same Act

With these observations he begged to move the first reading of the Bill

The Bill was read a first time

PENAL CODE

Mr Forbes moved that a communication received by him from the Madras Government be laid upon the table and referred to the Select Committee on "The Indian Penal Code"

Agreed to

The Council adjourned

Saturday, June 4, 1859

PRESENT

The Hon'ble Barnes Peacock, *Vice President*

The Hon Lieut Genl Sir J Outram,	H Forbes, Esq, and A. Sconce, Esq
P W LeGeyt, Esq,	
H B Harington, Esq,	

The Members assembled at the Meeting did not form the quorum required by Law for a Meeting of the Council for the purpose of making Laws.

Mr Forbes

Saturday, June 11, 1859

PRESENT

The Hon'ble Barnes Peacock, *Vice President*

H B Harington, Esq, | H Forbes, Esq, and A. Sconce, Esq

The Members assembled at the Meeting did not form the quorum required by Law for a Meeting of the Council for the purpose of making Laws The Council was therefore adjourned by the Vice-President at half past 11 o'Clock to Saturday, the 18th Instant, at 11 o'Clock

---

Saturday, June 18, 1859

PRESENT

The Hon'ble Barnes Peacock, *Vice-President*, in the Chair

Hon Lieut Genl Sir J Outram,	H Forbes, Esq,
Hon H B Harington,	Hon Sir C R M Jackson, and
P W LeGeyt, Esq,	A Sconce, Esq

ACQUISITION OF LAND FOR PUBLIC PURPOSES

The CLERK presented a Petition from Mr Robert Bain, of Prince of Wales' Island, praying for the repeal or a modification of Act VI of 1857 for the acquisition of land for public purposes

Mr PEACOCK moved that the Petition be printed

Agreed to

APPEALS

The CLERK presented a Petition from Zemindars and others of Bengal and Behar against the Bill "to provide for the more speedy disposal of Appeals in cases appealable to the Sudder Court and of applications for Special Appeals"

Mr SCONCE moved that the Petition be printed

Agreed to

MALACCA LANDS

The CLERK reported to the Council that he had received a communication from the Governor of the Straits

Settlement, re-urging the enactment of a law for declaring the rights of Government over the waste and forest lands at the Province of Malacca.

MR. PEACOCK moved that the communication be printed.

Agreed to.

EMIGRATION TO ST. VINCENT.

THE CLERK reported to the Council that he had received from the Home Department a copy of a Despatch from the Secretary of State for India with enclosures, regarding the proposed emigration of Indian laborers to the Colony of St. Vincent.

MR. PEACOCK moved that these papers be printed.

Agreed to.

MUNICIPAL ASSESSMENT (RANGOON).

THE CLERK reported to the Council that he had received from the Foreign Department copies of papers on the subject of a law for the levy of a Municipal tax and for the appointment of Municipal Commissioners in the Town of Rangoon.

MR. PEACOCK moved that these papers be printed.

Agreed to.

APPEALS.

MR. HARINGTON presented the Report of the Select Committee on the Bill "to provide for the more speedy disposal of Appeals in cases appealable to the Sudder Court and of applications for Special Appeals."

ESTATE OF THE LATE NABOB OF THE CARNATIC.

MR. FORBES moved the first reading of a Bill "to explain Act XXX of 1858 (to provide for the administration of the Estate and for the payment of the debts of the late Nabob of the Carnatic)." He said that, when a short time ago he brought in a Bill to amend Act XXX of 1858, and to meet the exigency which had arisen from the theft of the seals of the late Nabob of the Carnatic, he did not anticipate that he should again have to occupy the time and attention of the Council in any matter connected with a settlement of the late Nabob's affairs. He had, however, been disappointed in the hope he entertained, that, as far as this Council was concerned, the question of the late Nabob's estate was disposed of, and he had again occasion to ask for the attention of Honorable Members while he endeavored to explain to them the circumstances which had rendered further legislation necessary.

The Council was aware that from 1825 to 1842 the late Nabob was a minor, and that his uncle, Prince Azeem Jah, managed his affairs as Naib-i-Mooktar or Regent. On the death of the Nabob, and the decision of the British Government that the title and dignity of the Nabob of the Carnatic had ceased, it was determined that, as the revenues enjoyed by the Nabob in his life-time had lapsed to Government, it would be right that they should undertake the payment of debts which it was reasonable to suppose that his creditors had allowed the Nabob to contract, in full reliance that the dignity would descend, supported by its accustomed revenues. Accordingly Act XXX of 1858 was passed in order to provide for a fair adjudication of all claims preferred against the Nabob for debts contracted on his behalf during his minority, and by himself after he came of age, the Act declaring that the East India Company was willing to pay in full all such debts as should be proved to have been fairly and justly contracted by the Nabob, or on his behalf during his infancy by Azeem Jah as Nabob Regent, and he would beg the particular attention of the Council to these words, "fairly and justly," and "on his behalf," because the present Bill owed its origin to the necessity which had arisen for declaring the meaning which those words conveyed.

In a suit brought against the Government under Act XXX of 1858, for money lent to Azeem Jah during his Regency, the Judges of the Supreme Court at Madras had unanimously ruled that the words "fairly and justly" in the Act meant only what was just and fair as between borrower and lender, that is, between the Regent and the Banker, and that whenever the latter had lent money, and the former had received it, a debt was justly and fairly contracted within the Act, with-

out any reference to the question whether the debt was properly and necessarily contracted as between the Regent and the minor Nabob, or whether it was for the latter's use or not; and they had further ruled that the words "on his behalf" meant merely in his name, and were satisfied by proof that the Regent had pledged the name of the Nabob. The decision on claims which altogether amounted to more than forty lakhs of Rupees, depended on the interpretation to be given to the words he had just referred to, and although he would not so far presume as to take upon himself to say that the interpretation of the words of the Act by the Supreme Court was erroneous, as a Member of the Select Committee which sat upon the Bill, and as a Member of the Council which passed the Act, he must say that the interpretation which had been put upon the Act by the Supreme Court was not that which the Legislature intended that it should bear.

The Government did not offer, and this Council did not intend, to pledge the Government to pay the debts of Prince Azeem Jah, but those of the late Nabob; and throughout the Act repeated mention is made of the debts of the Nabob, and the creditors of the Nabob, pointing out, apparently with some distinctness, what the intention of the Legislature was.

But however that might be, there was no doubt that the Act had been misunderstood; and whether the misunderstanding had arisen from a faulty wording of the Act, or from a misapprehension of its terms, a declaration of its true intention was now clearly necessary.

It was matter for congratulation that, as far as was at present known, the declaration of the meaning of the Act now proposed to be given would not affect any decision already passed, for although the Supreme Court had declared its interpretation of the Act, the claim, in the investigation of which the declaration was made, was decided in favor of the Government and on other grounds than the interpretation to be put on the part of the Act to which he had been referring.

The Bill opened with declaring that as doubts had arisen whether certain debts contracted by Azeem Jah during his Regency were claims within the meaning of Act XXX of 1858, it was expedient to remove such doubts, and then it enacted that no claim should be considered valid unless it should be proved that the debt on which it was founded was incurred necessarily and properly for the use and benefit of the Nabob. At the end of the Section the Government was allowed to dispense with such proof, and the reason for this was that the Nabob, although always repudiating the great mass of the debt which Azeem Jah had incurred during his Regency, did, from good feeling towards, and out of compliment to, his uncle, engage to pay certain debts to the amount of five lakhs of Rupees, and had actually paid about thirty thousand Rupees before his death; and although the Government was not legally bound to take up these debts, there was perhaps some moral obligation to do so, and at all events they had expressed their willingness and their intention to pay such of them as might be proved to have been justly contracted, and it was to enable creditors to bring these debts before the Court for adjudication that this Clause in the Section was inserted.

Then followed two Sections, one to declare that the Court might award costs to Government whenever they deemed it right and proper to do so, and the other to declare that all decisions under the Act were open to appeal to the Privy Council.

The Supreme Court at Madrás had more than once expressed a doubt upon these two points, and it had been considered well to resolve them.

The Bill was read a first time.

MR. FORBES said, he had given notice of his intention to move for the suspension of the Standing Orders, in order that this Bill might at once be passed through its several stages. Honorable Members would have seen that this was not a new law, but only a declaration of the meaning and intention of an old law; and he hoped that they would support him in his Motion. He was of opinion that, when those whose duty it was to administer the law had misapprehended its true intent and meaning, the earliest opportunity should be taken to declare what the meaning of the Legislature was.

He therefore begged leave to move that the Standing Orders be suspended.

MR. PEACOCK seconded the Motion.

MR. SCONCE said, he felt some difficulty in discussing the question brought before the Council, not having had the advantage of being connected with the framing of the original enactment.

This, as had just been said, was not a new law. It was a law to explain Act XXX of 1858. It appeared to him that the principle of what was called this explanation so materially affected the principle of the old law, that it would be unfair to the creditors of the late Nabob to hurry the proposed Bill through the Council.

If the matter had been simply one as between Government and the heirs of the late Nabob, there might, or might not be, the same objection to the adoption of the proposed measure. But it was a matter affecting third parties, who might be *bonâ fide* creditors, and it appeared to him very objectionable, on the first announcement of the Bill, to pass it through its several stages.

There was another disadvantage under which he felt he labored, and that was his not being in possession of the decision of the learned Judges of the Supreme Court at Madras, to which allusion had been made, and which has given occasion for this Bill; and he wished to be fully informed of the grounds upon which the Judges had based their decision.

As it was, the words of the Act of 1858, which had been supposed to support the proposition of the present Bill, seemed to fall short of the explanation now proposed to be given to it. The words which had been quoted by the Honorable Member for Madras, and which Her Majesty's Judges had interpreted, were "fairly and justly," that is, "debts fairly and justly contracted by the said Nabob, or, on his behalf, during his infancy, by the said Azeem Jah as Nabob Regent."

This was what it was considered necessary to explain. But he would remark that, in Act XXX of 1858, two borrowers were set forth. There was first the late Nabob himself, and next his Naib-i-Mooktar or Regent. There was no distinction between debts contracted by the one and debts contracted by the other. Nevertheless, in the present Bill, all mention of debts contracted by the Nabob was omitted, and only those contracted by Azeem Jah were referred to. It appeared to him that, in the original Act, the Regent or Naib-i-Mooktar was substantially held forth as the agent or representative of his principal. The Council were not asked to review—they had no grounds set forth for reviewing—any acts done by him as guardian for his ward. What he did he is presumed by Act XXX of 1858 to have done as the Regent, and, in fact, legal agent of the minor Nabob. But to carry the creditor beyond the agency under which the borrower acted, and to oblige him to follow the money he had lent, with the view of seeing that it was not misapplied, involved a principle entirely opposed to the foundations of the law which, in all Courts of justice, was being daily administered.

But, in addition to the words "fairly and justly contracted," he found in Act XXX of 1858 a distinct definition of the debts which were to be paid, that is, "such debts to be estimated in respect of moneys at the amounts which may be proved to have been actually advanced or paid by such creditors." Here the original law left no room for the principle embodied in this Bill. As he understood the original Act, it declared that a *bonâ fide* creditor, who should prove the payment of the money claimed by him, would be held to be a creditor within the scope of the law. On the other hand, this Bill proposed to set aside the recognition of such claims entirely, and to declare that, unless a creditor could satisfy the Court that his debt was a necessary or proper one to be incurred on behalf, or for the use of, the Nabob, his claim could not be entertained. The principle of the Bill was, as he (Mr. Sconce) had already observed, to set aside the declared agency of the Regent, and to require creditors to follow their money and show the purposes for which it was required. The words "on behalf of the Nabob" in the original Act which they were told, the Judges of the Supreme Court at Madras had misinterpreted into "in his name," were such as warrant no presumption of misinterpretation, and he (Mr. Sconce)

thought no law should require Judges to impart to them any other meaning than what they considered those words were, according to the English language, susceptible of.

These were the grounds upon which he begged to oppose the Motion for the suspension of the Standing Orders.

MR. PEACOCK said, the question now was not whether this Bill should be passed or not, but simply whether the Standing Orders should be suspended with a view to its being proceeded with. It would probably be more correct to postpone any discussion as to the merits of the Bill until the Motion for the second reading. But as the Honorable Member for Bengal had stated his objections to the Bill, he (Mr. Peacock) would now state his views on the subject.

It must be recollected that if, in the ordinary course of legislation, the passing of the Bill were to be delayed for three months, a large number of claims might be brought to a hearing, and probably be determined in the interim.

He apprehended that it would scarcely be right if a decision should be passed by the Court for the Legislature to pass a law upsetting that decision. But if the Court had misunderstood the meaning of the Legislature, the Legislature might well come forward and declare what its intention was when it passed the former Bill. It might be that the former Act was ambiguously worded, and that the Court were warranted in the construction which they had put upon it; or it might be that the words did not express the meaning which the Court had put upon them. It was not necessary to determine that question. If the construction which the Court had put upon the language of the Legislature was not in accordance with their meaning, surely it was competent to them to come forward and declare what their meaning was. Then he thought that, if the Legislature were to declare their meaning, it was far better that they should do so now than three months hence.

The Honorable Member for Bengal, however, had gone into the merits of the case, and had considered whether the Supreme Court at Madras had not decided upon a correct interpretation of the law. He (Mr. Peacock) thought that it would be well for him to go into that matter fully in the present stage of the proceedings, in order that it might be better understood.

After the death of the late Nabob, and after the interest which he had been allowed to enjoy in the revenues of the Carnatic had lapsed to the Government, the Governor in Council of Madras, under instructions from the Honorable Court of Directors, offered upon certain terms to pay the debts of the late Nabob, including such as had been incurred justly and fairly on his behalf, during his minority, by his uncle, Prince Azeem Jah, as Naib-i-Mooktar or Regent.

The question was whether the Court intended, and whether this Council in passing Act XXX of 1858 intended, that the Government should pay all debts whatever which had been contracted by the Regent during the minority of the Nabob, if contracted fairly as between the Regent and the creditors, however unjust it might have been as between the Regent and the Nabob for the former to contract them, and whether they were contracted for the benefit of the Nabob or not. The Court had not, as he understood, actually decided the case against Government—on the contrary they decided the particular case in favor of Government, upon the ground that the debts had not in fact been contracted on behalf of the Nabob, but expressly on behalf of the Prince Azeem Jah as a private debt of his own.

The Court had come to that decision upon the evidence of Prince Azeem Jáh, who had been examined as a witness, and who proved that he had borrowed the money on his own account, and that he alone was liable for it.

But the Court, in determining that case, had expressed their opinion as to the proper construction of the words "fairly and justly contracted by the Nabob, or on his behalf, during his infancy, by Azeem Jáh as Nabob Regent." The Court held that, if the money was fairly and justly lent by the creditors to the Nabob Regent, and the latter borrowed it in the name of the Nabob, it was a debt "fairly and justly contracted by the Nabob Regent on behalf of the Nabob" within the meaning of the words to which he had already drawn the attention of the Council, notwithstanding it might have

been wholly unnecessary to borrow the money for the use of the Nabob, and notwithstanding it might never have been applied to his use. But it should be remarked that the words "fairly and justly contracted on behalf of the Nabob" were used only in the Preamble of the Act and not in the enacting Clause. The enactment was in Section XIV, by which the Government was bound to pay any such debts as were fairly and justly due from the Nabob or were payable out of his estate. The words in the Preamble might be used to explain the words of the enacting Clause, but they did not themselves amount to an enactment. But even looking at the words of the Preamble alone, it was clear that the words "fairly and justly" had reference to the conduct of the Nabob Regent, and not to the conduct of the creditors—"fairly and justly contracted by the Nabob or on his behalf, during his minority, by Azeem Jah as Nabob Regent." Then the justness or fairness of the conduct of the Regent must have reference to the Nabob and not to the creditors, for if it were fair and just as between the Prince and the Nabob to contract the debts, no unfairness towards the creditors could deprive the latter of their rights. If the debts were fairly due from the Nabob, or binding upon his estate, they were to be paid by Government, otherwise they did not fall within Section XIV of the Act. If the Legislature had not expressed their meaning clearly, they should do so now. He contended that the Prince had no authority to borrow money in the name of the Nabob when it was not required for his use, and that he had no power to bind the Nabob to pay money even though borrowed in his name, if it was not necessary to borrow it for his use, and if it was not applied for the purpose.

Let us see how the case stood. He would read an extract from the letter of the Advocate General of Madras :—

"16. When the late Nabob's father died, the Government in 1826 'recognized' the infant Nabob as his lawful successor; but it *appointed* of its own authority the Prince to conduct the affairs of the Circar during the minority as a Naib-i-Mooktar.

"17. Government, therefore, had the right to impose terms upon, and exact engagements from, the Naib-i-Mooktar, with a view to protect the Nabob's interests, and it did so. It informed him of its own wish and readiness to aid him in freeing the Circar from debt, in order to enable him to keep it so during the minority, and to lay by a fund for the young Nabob's use when he should obtain his majority to meet the expenses of that occasion, for example, his installation, marriage, &c.

"18. Government accordingly lent the Naib-i-Mooktar 13½ lakhs of rupees—4½ lakhs in cash without interest, and 9 lakhs in Company's Paper at 5 per cent. interest. With this liberal aid, and 5 lakhs of Circar funds, the Naib-i-Mooktar paid off 18 lakhs of Circar debts, bearing 24 per cent. of interest, and reported to Government, in 1826, that he had done so, and that the Circar now owed nothing.

"19. Government then exacted a solemn promise from the Naib-i-Mooktar that he would incur no fresh debt without their knowledge. This promise he gave in the most express terms, and repeated in several letters.

"20. Government also ordered him to inform all who had had money dealings with the Circar, that, in future, they must look for payment only to the individuals to whom they might lend money, and that no such debts would be discharged from, or recognized as binding upon, the Nabob's income, and the Naib-i-Mooktar in reply assured Government that he had given this warning accordingly. This was in 1827.

"21. Subsequently, and on several occasions, the Naib-i-Mooktar assured the Government, (which at his request had increased the monthly allowance by Rupees 14,000,) that the Circar was quite free from debt, that there was no occasion whatever for contracting any fresh debt, that the income was not only ample for all necessary expenses, but sufficient to admit of his laying by, from 1833, a sum of one lakh of Rupees annually, to form a fund for the expenses of the young Nabob's majority.

"22. Nay more, from 1833 to 1842, the Naib-i-Mooktar every year reported to Government that he had laid by this one lakh for this purpose; and in August 1842, when the treasury was found to contain but one lakh instead of 9 lakhs, the Naib-i-Mooktar sent in a memorandum, showing that the missing 8 lakhs had been expended, not for the Nabob's use, or in necessary expenses, but chiefly in loans to his, the Naib-i-Mooktar's relations, *viz.* 5 lakhs to the Begum his mother, 60,000 Rupees to Gholam Moortooza Khan, and so on.

"23. When I was stating to the Supreme Court the case for the defence, I opened all these facts, and I said that, with reference thereto, I was prepared to contend that, by the words 'debts fairly and justly contracted on behalf of the Nabob, during his infancy, by Azeem Jah,' the Legislature must be taken to have meant, *not* all debts contracted in the Nabob's name, however unlimited in amount, however unnecessarily and improperly contracted, and without reference to whether

they were contracted for the Nabob's use or expended for his benefit; but such only as were contracted necessarily or properly in his name, or, at least, such as were (though perhaps not necessarily) actually contracted for his use, and from which he had had some benefit or advantage. I admitted, in reply to a question from the Court, that, with regard to debts contracted by the Nabob himself, after he had attained his majority, the words 'fairly and justly' must mean such as he, or his authorized Agent, had received fair value for; but that, when he was a minor, unable to act or judge for himself, the words must have a very different meaning, and must mean debts 'properly and necessarily contracted for his use,' and not merely such as had been unnecessarily and without propriety or excuse contracted in his name, and expended without regard to his use or benefit.

"24. The Court however ruled the point against me, refusing to receive any evidence on the points I have above mentioned, and decided that the words 'fairly and justly' meant only what was just and fair as between borrower and lender, that is, between the Naib-i-Mooktar and the Sahookars, and that, therefore, whenever the latter had lent the money, and the former had received it, that was a debt 'justly and fairly' contracted within the meaning of the Act, without any reference to the question whether the debt was necessarily or properly contracted as between the Naib-i-Mooktar and the minor Nabob, or whether it was for the latter's use or not, and that the words 'on his behalf' meant merely 'in his name,' and were satisfied by proving that the Naib-i-Mooktar had pledged the Nabob's name."

He would also read an extract from the Despatch of the Honorable Court of Directors on which Act XXX of 1858 was based:—

"We entirely agree in the liberal intentions of the Madras Government in favor of the family. We approve the proposals, that a handsome allowance should be given to the Prince Azeem Jah Bahadoor, that the debts incurred by him as Naib-i-Mooktar should be investigated by a Commission, and such of them as are deemed legitimate paid by Government; that the same course should be pursued respecting the debts of the late Nabob, his personal property being first appropriated towards their liquidation;" and they added "that the salaries of the principal officers of the Nabob's household should be continued for their lives, and that all the servants, attendants, troops, and followers should be discharged, pensions or gratuities being granted to such as may have an equitable claim to such consideration.

"We shall only add that, in the adjustment of debts, the utmost care should be used to exclude fictitious or improper claims, that only sums should be admitted which can be proved to have been advanced; that in regard to articles sold, only the fair market price of the day should be allowed, and that our standing order, limiting the interest in such cases to a maximum of six per cent. simple interest, must be scrupulously observed."

It must be remembered that the East India Company were not liable for these debts at all. It was a mere act of grace on their part to undertake to pay any of them. They undertook to pay those debts which were fairly and justly due from the Nabob, those to which he was himself liable, and which the creditors might have had some expectation of receiving if the interest of the Nabob had not lapsed upon his death. But the debts in question were debts which the Nabob himself had from the beginning repudiated, except the Cutcherry bonds which he had from consideration for his uncle taken upon himself to pay, protesting at the same time that he was neither legally nor morally bound to do so. The East India Company could scarcely have been expected to pay any debts which had been repudiated by the Nabob and which were not his debts.

The Honorable Member for Bengal had said that the Act XXX of 1858 clearly defined the debts to be such debts as should be proved to have been fairly and justly contracted by the Nabob, or on his behalf during his infancy by the Regent. Now he (Mr. Peacock) would say that the word "contracted" meant "incurred;" and could it be said that a debt was fairly and justly incurred when there were sufficient assets to pay all the necessary expenses of the Nabob to support his state and dignity, and to leave a surplus of one lakh a year? Section XIV spoke only of debts which were binding on the Nabob himself, and then the Section went on to say, according to the instructions from the Court of Directors, that the amount was to be "estimated in respect of moneys at the amount which shall be proved to have been *actually advanced to or paid for the use of the said Nabob*, and in respect of goods supplied or other matters at the amount which shall be proved to have been the fair and actual value thereof at the time when such debts were incurred, together with such interest, if any, not exceeding the rate of six per centum per annum as shall be awarded by the said Court." The

East India Company had come forward and told the creditors, "We will pay you the money you have actually advanced for the use or benefit of the Nabob. We are coming forward, not because we are legally or morally bound to do so, but as an act of liberality. We will pay you if you choose to bring forward your claims, and will pay you whether the Nabob has left assets or not. If you do not consent to accept our offer, you may institute a suit in the Supreme Court, but in that case you must look only to the assets of the Nabob. But if you come in according to our terms, then bring your suit at once." This liberal offer could not be held to apply to all the debts incurred by Azeem Jah, but only to those debts which had been justly or fairly contracted on behalf or for the use of the Nabob.

It appeared to him (Mr. Peacock) that for these reasons this Bill was a very fair and just one. He would not say that the Supreme Court at Madras had not construed the words of Act XXX of 1858 rightly. But as a Member of the Select Committee on that Bill, he could say that the words in the Preamble "fairly and justly contracted by the said Nabob or on his behalf during his infancy by the said Azeem Jah as Nabob Regent" were not intended to apply to moneys which had been borrowed in the name of the Nabob when there was no necessity to borrow them, and which had never been applied for his use. Upon the letter of the Advocate General at Madras, the Government of India had thought it expedient that a declaratory Law, explaining the meaning of those words, should be brought in and passed under a suspension of the Standing Orders. He therefore felt bound to support the Honorable Member for Madras. If that Honorable Gentleman had not brought in the Bill, he (Mr. Peacock) should have introduced it himself.

The Motion for the suspension of the Standing Orders was put and carried.

MR. FORBES moved that the Bill be read a second time.

MR. SCONCE said that, on grounds not dissimilar to those already expressed by him, he ventured to oppose the further progress of the Bill. He had said before that his main object was to look to the interests of third parties, that is, parties who appeared to stand as *bonâ fide* creditors of the late Nabob. In opposing the Motion for the suspension of the Standing Orders, it seemed to him that he had been very much justified in the view he had taken, by the remarks and the information which had been laid before the Council by the Honorable and learned Vice-President; and he (Mr. Sconce) was persuaded that the information elicited showed the necessity for suspending action on the Bill in the manner proposed.

He had referred to the words "fairly and justly." According to his construction of the original Act, he thought those words could not be held to mean only such debts as had been fairly and justly contracted by the Regent on behalf of the Nabob, because the creditors had nothing to do with the purpose for which a debt was contracted. They were induced to part with their money or their goods under the belief that the Regent was the recognized agent or representative of the Nabob. It, therefore, seemed to him unfair now to turn round upon the creditors and tell them that those debts had not been necessarily or properly incurred, and that they should have looked to the purpose for which they had been contracted, whether on behalf or for the use of the Nabob. He had before alluded merely to the tenor of the Preamble of Act XXX of 1858 in support of the view he had taken. But he had since been referred to Section XIV for the exact bearing of the law. In that Section he found it stated that a creditor was entitled to receive "such amount as shall be ascertained by the Supreme Court to have been justly and fairly due to him from the late Nabob at the time of his death." There was therefore this distinction between Section XIV and the Preamble, that the Preamble spoke of debts contracted by the Nabob personally or by the Regent for him or on his behalf, while Section XIV only made mention of debts contracted by the Nabob himself. But it could not be otherwise. The debts to be paid were the Nabob's debts, not his Agents; and therefore the language of Section XIV was necessarily

restricted to mentioning the name of the Nabob.

He would repeat that he was fully sensible of having derived from the speech of the Honorable and learned Vice-President much information that he did not before possess. But he must say that, on the ground of principle, it would be unconstitutional to press the Bill through all its stages, without giving *bonâ fide* creditors the opportunity of being heard against it.

MR. PEACOCK said, with reference to the address just made by the Honorable Member for Bengal, it appeared to him that the Preamble did not apply to all the debts contracted by Azeem Jah. A debt must be proved to have been fairly and justly contracted on behalf or for the use of the Nabob before it could be held to be a debt under Section XIV. There was no direct or implied recognition of Azeem Jah as a general agent to act in all things for the Nabob. The Act recognized him only as an agent for special duty. There was a great distinction between an agent with general authority and an agent with limited authority. In 1826 the Government had exacted a solemn promise from the Regent that he would not incur any fresh debts without their knowledge; and in 1832 the Regent reported that he would lay by from the following year a lakh of Rupees annually out of the surplus to form a fund for the young Nabob upon his attaining his majority. Was it possible to suppose that the Government would have vested the Nabob Regent with the general authority to contract debts in the name of the Nabob in such a way as to justify creditors lending him money, whether required for the use or benefit of the Nabob or not? Could it be supposed that a Regent or guardian appointed to look after the estate of the infant could have had the power of borrowing money to any extent in the name of the infant, and binding him to pay it, though a farthing of it was never received by him, or expended for his use? If such were the case, the Nabob, upon his coming of age, might have found his whole income absorbed and himself a beggar. It never could have been the intention to give the Regent such a power.

Mr. Sconce

He (Mr. Peacock) thought it was perfectly clear that the debts in question had not been justly incurred for the use or benefit of the Nabob. Indeed, the Nabob had all along repudiated them. If he (Mr. Peacock) had had any doubts in his mind on this point, he should have readily voted with the Honorable Member for Bengal. But as, instead of having any doubts, he was fully convinced that the debts in question had not been contracted for the use or benefit of the Nabob, he should vote in favor of the second reading of the Bill.

MR HARINGTON said, he thought the Honorable Member for Bengal, in the objections entertained by him to the Bill before the Council, had not sufficiently adverted to the character of Act XXX of 1858, which that Bill was intended to explain. No legal obligation rested upon the Government to pay the debts of the late Nabob of the Carnatic; but the Government had, nevertheless, come forward, and in a spirit of liberality volunteered to discharge all claims against the estate of the late Nabob upon certain conditions. Looking to the circumstances under which the Government took this liability upon itself, he thought there could be no doubt of the right of the Government to impose such conditions as it pleased or considered proper. The conditions prescribed, and which were contained in the Preamble to Act XXX of 1858, were that the debts to be paid by the Government had been fairly and justly contracted by the late Nabob, or on his account by the Nabob Regent. The Government never agreed to pay all debts incurred by the Nabob Regent in the name of the late Nabob, whether fairly and justly contracted, or otherwise. The whole question turned upon the construction to be put upon the words fairly and justly, and as, from information before the Council, it appeared that the Supreme Court at Madras were disposed to give a meaning to those words which it was clearly never intended that they should bear, it became necessary to pass a law to explain what was really intended by the Legislature in the use of them, and he thought, therefore, that the Honorable Member for Madras had done quite right in bringing in the

present Bill. He would only further observe that the question was not one of Principal and Agent.

The Motion was carried, and the Bill read a second time.

MR. FORBES moved that the Council resolve itself into a Committee on the Bill.

Agreed to.

Section I was passed after verbal amendments.

Section II was passed as it stood.

Section III provided as follows:—

"It is hereby declared that it was not the intention of the said Act to exclude from appeal to Her Majesty in Council any awards, orders, or decisions of the said Supreme Court, made upon any investigation under Section XXII as aforesaid."

MR. HARINGTON said, the wording of this Section seemed to him to be scarcely consistent with the opinion which had been expressed by the Select Committee on the Bill relating to the estate of the late Nabob of Surat in the Report which the Council would be presently asked to adopt, and to which he was quite prepared to give his assent. The Section said that it was not the intention of the Act, which this Bill was brought in to explain, to exclude from appeal to Her Majesty in Council any awards, orders, or decisions which might be made in cases disposed of under the Act. This seemed to imply that this Council had the power of taking away the right of appeal to the Privy Council, though in this particular instance they might not have exercised it; but in the Report to which he had referred, the opinion was clearly expressed that this Council had no authority either to give or take away this right. In this opinion he fully concurred. He did not know whether the Section was necessary, but if it was, he thought the wording of it should be altered, so as to remove the objection to which it appeared to him to be now open.

SIR CHARLES JACKSON said, it appeared to him that this Section was not necessary. All final orders made by the Supreme Court, when the property at stake was of greater value than ten thousand Rupees, were appealable as a matter of course. In cases under ten thousand Rupees, application might be made to the Privy Council for special leave to appeal. The right to appeal, when the property was above ten thousand Rupees, had been settled by a rule of the Privy Council framed under the provisions of an Act of Parliament. Still that rule left it open to Her Majesty to receive applications for appeal in cases below that amount, as had been done at Bombay in a case where the property was of very small value, but in which a question of very great importance relating to the Revenue was involved.

MR. PEACOCK said, he agreed in opinion that the Section was not actually necessary. He had no doubt himself that the practice was as had just been described by the Honorable and learned Judge Sir C. Jackson. But the Supreme Court at Madras, it appeared, had more than once entertained doubts on this point, and the Advocate General there had suggested that the law on the subject should be made quite clear. Although the Section was not actually necessary, the object of its insertion was to prevent litigation. He saw no objection to it, nor did he see how it was inconsistent with the opinion expressed in the Report of the Select Committee on the Surat Bill, to which allusion had been made by the Honorable Member (Mr. Harington). If, however, any Member objected to the Section, he (Mr. Peacock) would not press it.

The Section was then put and agreed to.

The Preamble was passed after verbal amendments.

The Title was passed as it stood.

The Council having resumed its sitting, the Bill was reported.

MR. FORBES moved that the Bill be read a third time and passed.

MR. SCONCE said, he could only repeat his opposition to the passing of the Bill. It seemed to him that, in considering the terms and the footing on which the original Act was passed, certain conditions had been held out to *bonâ fide* creditors; and it was because those conditions were proposed to be departed from in respect of those creditors, that he objected to proceeding with the Bill, without giving them the opportunity of being heard against it.

In fact, he did not know on what

principle the Bill had been introduced. The Honorable and learned Vice-President had called it a fair and honest Bill. But, looking to Section XIV, he supposed that, as a matter of course, the Supreme Court at Madras had thought that the origin of the debt was not necessarily excluded from consideration. In adjudicating, therefore, it would, no doubt, be the duty of the Court to consider the nature of the circumstances under which the debt was contracted.

Another question for its consideration was, whether the power of the agent was supposed to have been limited or unlimited. As said before, the power of the Regent had been fully recognized On the other hand, if the power of the agent was limited, there was nothing before the Council to justify them in assuming that it was so.

He had been referred by the Honorable Member (Mr. Harington) to the concession which had been made, not by the Legislature, but by the Government, in offering to pay the fair and just debts of the late Nabob But it appeared to him (Mr. Sconce), with regard to the claims of persons who should stand before them as third parties, that it was irregular to withdraw from them a boon, if it were a boon, without giving them the opportunity of remonstrating against the proposed withdrawal.

MR. PEACOCK said, he thought that the question now was not as to the terms or conditions upon which Act XXX of 1858 was passed, but simply whether the Court had determined according to the intention of the Legislature. If the Court had put a construction upon the language used by the Legislature different from that which was intended, and if the Legislature desired to use fresh terms and less ambiguous language to declare their intention, he (Mr. Peacock) could not see what necessity there was for asking the creditors to submit their views on that subject. Surely the Council must know what their intention was better than the creditors can inform them.

The Motion was carried, and the Bill read a third time.

MR. FORBES moved that Mr. Peacock be requested to take the Bill to the Governor General for his assent.

Agreed to.

TRIALS BY SESSIONS JUDGES.

MR. HARINGTON moved the second reading of the Bill "to enable Sessions Judges to pass sentence in certain cases without reference to the Sudder Court."

The Motion was carried, and the Bill read a second time.

SIGNALS (RIVER HOOGHLY).

MR. SCONCE moved the second reading of the Bill "to enforce signals of the names of vessels passing signal stations established within the River Hooghly and the branches thereof."

MR. HARINGTON said, he fully agreed in the opinion expressed by the Honorable Member for Bengal when he introduced the Bill which they were now asked to read a second time, to the effect that there could be no doubt of the right of the Legislature to pass a law of this nature when the interests of the public rendered it necessary; but he thought it might be fairly enquired, did any such necessity really exist at the present time as to call for legislation in the form of the Bill brought in by the Honorable Member for Bengal, not as regarded a particular section of the Calcutta public, but as regarded the public generally. This question must, he considered, be answered in the negative. He had carefully read the correspondence which had been printed as an annexure to the Bill, but he had failed to discover therein any adequate justification of this measure, or any thing showing its necessity on public grounds, which alone could warrant their giving the sanction of the Legislature to it. No doubt they had before them reports from the Superintendent of Marine and the Master Attendant, both of whom were strongly in favor of the Bill; but while he fully admitted the merits of those Officers, and was quite prepared to allow that, in all matters connected with their respective offices, their opinions were entitled to great respect, he observed that neither of them said that this Bill was required for the purposes of their offices, or that it was essential to the efficient discharge of their duties. They were not told that the Bill was required for the purposes of the Post Office, or

for purposes of Police, or for the public health or safety; nor, looking at the Masters of the vessels who traded with the Port of Calcutta in their capacity of public traders or public carriers in the legal sense of those words, were they told that the shippers of goods by these vessels on their return voyage to Calcutta, or the consignees of those goods, required the Bill for their protection or convenience. The question then arose, for what purpose was the Bill required? Disguise it as they might, he (Mr. Harington) thought that the only answer that could be given to the question was that it was a Bill to protect one class of Opium speculators against another class of speculators in the same drug, who, from being possessed of more capital or greater enterprise, had been enabled to secure for themselves certain advantages, of which this Bill, should it become law, would deprive them; but he could not regard that as a legitimate object of legislation. He believed he was right in saying that no such law existed in England, and that the want of such a law was not felt there. If then the public interests in England, with its numerous shipping, did not require a law of this nature, he (Mr. Harington) could not understand why the public interests required it in Calcutta. It was no answer to the objections which appeared to him to exist to the Bill, to say that the vessels which would be chiefly affected by its provisions were obliged by law to carry mails, by which the information which the owners of these vessels wished to keep to themselves, for a time at least, might be and was conveyed. It was scarcely necessary for him to say that it was not this particular information alone that was conveyed by these mails, but that they carried the letters of the entire public, using that term in its largest sense, commencing with the Government and proceeding downwards. It was, therefore, very right and proper, and for the interests of the public as a public, that the obligation of carrying mails should be enforced by law on all vessels, and that they should be compelled to deliver their mails as speedily as possible. But this was a very different thing from the interests of a small section of the Calcutta community, whose success or failure in the speculations carried on by them in a particular article, often in a spirit of gambling, was a matter of the smallest possible moment, or of no moment at all, to the public at large. The promoters of the Bill had been able to adduce only two instances to show the necessity of its introduction; but it was admitted that one of the cases was not in point. In that case the Master of the vessel wilfully omitted to land his mail where he was bound by law to have landed it, and he was very justly punished for the omission. But the present Bill would not meet a case of this nature, though the Chamber of Commerce had given it as their opinion that the punishment which could be awarded under the existing law on a conviction for the offence of which the Master of the vessel in the case referred to was found guilty was quite inadequate, and they had recommended that the penalty should be greatly enhanced. No attention, however, appeared to have been paid to this recommendation in framing the present Bill, though it certainly seemed to him (Mr. Harington) to be deserving of consideration. In the second case, it was not clear that any proper enquiry had been made with a view to ascertain whether the cause assigned for anchoring the vessel outside was a valid one, or whether it was a mere pretext resorted to for a particular purpose; nor had it been shown that any public inconvenience had been experienced in consequence of the number of the vessel not having been signalled to the nearest telegraphic station, in accordance with the request expressed by the Pilot. It was very possible that it might have been for the convenience or advantage of certain parties, other than the owners of the vessels, to have been informed of her arrival at the same time that the owners probably received their information; but, as he had already intimated, he did not think that they should be called upon to legislate in this matter for the protection of individual or class interests. It had been said that it was as great an offence to withhold information of the arrival of a vessel by not hoisting her number as it was to hoist a wrong number; but he could not concur in that position. When a wrong number was hoisted, it would generally be done with a fraudu-

lent intention, but the case was very different when information was simply withheld, the communication of which was not required for the general good. In the absence then of any information or evidence to show that this Bill was really necessary for the interests of the Government or the public at large, he (Mr. Harington) felt himself unable to give his assent to the second reading of it.

MR. LEGEYT said, he generally assented to what had just fallen from the Honorable Member (Mr. Harington); but he (Mr. LeGeyt) had another objection to the Bill, which, if passed in its present shape, would become wholly inoperative. Section II provided a penalty of a hundred Rupees for a Master of a vessel refusing or neglecting to hoist his number. Now, if the object of not disclosing the name of the vessel was worth a great deal more, probably a hundred times as much, to the parties concerned, the proposed penalty would be quite inadequate; and with regard to imprisonment, he did not think that any Magistrate would send a Commander of a vessel to jail for thirty days for such an offence, or that that would be the best way of enforcing the provisions of a Bill like that now before the Council. If any good ground could still be urged in favor of such a restriction, and if it could be shown, as had been mentioned, that the Bill was intended to provide for the public safety, he thought it would be far preferable that this Bill should be withdrawn, and that, in lieu of it, another Bill be introduced, adopting the suggestion of the Superintendent of Marine, that authority be given to the Pilot of a vessel to enforce the order for showing her number, or, as an alternative, to refuse to continue in the vessel.

MR. PEACOCK said, he entirely agreed with the Honorable Member (Mr. Harington) and the Honorable Member for Bombay. He saw no sufficient case shown for interfering, as this Bill proposed to do, with private enterprise. There was nothing in the papers to bear out the allegation in the Statement of objects and reasons, that "there is reason to apprehend that parties through whom communications with China are kept up are disposed to use the opportunities naturally arising from their position, to the detriment of the mercantile community and to the disadvantage of the public generally." The Honorable Mover had not shown that the Masters or owners of ships had been guilty of any fraud or of any attempt at fraud. There was no more reason for preventing a person, who obtained private information by means of a ship employed by him for that purpose, from using that information, than there was for restricting every other person from using private information which he obtained by other means. There was no great reason for informing the public that Mr. A.'s ship from China was at Kedgeree, and therefore that the owner might possibly have some private information as to the price of opium, than there was for declaring that no person should receive private information as to the state of any particular market by the Electric Telegraph, or that his name should be published. In fact, he did not see how the owner of a vessel which refused to hoist her number could receive information of her arrival before any other person, or any private information from her, unless it were through a private message for which he would be obliged to pay. All he could know (as others would at the same time know) would be that a ship had arrived without showing her number. But even supposing it were made known that the *Lightning* had arrived from China, all that the public would gain would be that they might suspect from that circumstance that the owner might be in possession of private information as to the rate of opium ruling in China, and they would be more cautious in dealing with him. So, if the owner of a China Steamer were found to keep back from the public information of her arrival, and to enter into opium-contracts upon the faith of private information received by her, persons would soon cease to have dealings with him. If the thing were thus left alone, it would soon find its own level and rectify itself. He, therefore, thought that this Bill, which would in some respects interfere with private enterprise, ought not to be passed. But even if it were passed, the object of the promoters might easily be frustrated. There was nothing to prevent a Steamer lying at the Sandheads and sending a private message by a Tug

Steamer to the nearest Telegraph Station. Nor was there any thing to compel a foreign vessel to show her number. If there were any public object for passing such a Bill, it should apply to all vessels, Foreign as well as British. He did not mean to say that he would oppose such a Bill if sufficient public grounds were shown for it. All he meant to contend was that the reasons urged were not sufficient to induce him to vote in support of it, and at present he did not see any.

MR. SCONCE said that, after what had been stated, more especially by the Honorable Member (Mr. Harington), he thought he had been materially relieved from saying much about the propriety of legislating on such matters. At the same time he should be unwilling, on his own account, to magnify the necessity for the proposed measure. He looked upon it as a Bill embracing both material public and material social advantages. He need not attempt to define the circumstances under which the Legislature was justified in interfering with the private acts of private individuals. Each case was determined by its own merits according to the time and circumstances that it occurred.

With regard to this Bill, it seemed to him that allusion had been made as though it applied only to China vessels, whereas it was a general measure. Communications to China were made by vessels which were compelled, not only to carry, but also to deliver mails. He could not help looking upon the communication as one of public interest, and he believed it to be a principle of very general application that men who, for their own advantage, made use of the public, should on occasion be required to serve the public for their advantage. He was not sufficiently informed as to the extent to which each single China vessel depended on the exports and imports of its own owners. He apprehended, however, that, as carriers for the public, all who opened large lines of communication became, in a manner, public servants. He had said that they used the public in so far as they carried their goods, and it seemed to him that it was a fair return to compel them to report their arrival. But they served the public in another way, meaning in a larger sense the commonwealth and not only its individual members. They had the protection of the laws at sea and on shore; they had the advantages of the Port; they benefited by our Postal arrangements; nay, they were indebted to the public for the establishment of the Electric Telegraph, which, while so ready to use on their own account, they practically shut against others.

These were the general grounds upon which he would advocate the second reading of the Bill.

The Honorable Member for Bombay had said that, in one respect, it would be inoperative. But that was a point for consideration in Committee, quite distinct from the principle of the Bill itself.

Again, it had been said that parties who paid for their information should not be deprived of it. On general grounds, however, he maintained that it was nothing but fair that owners of vessels should be obliged to reciprocate the advantages which they enjoyed.

The Motion was then put and negatived.

PORTS AND PORT DUES.

MR. FORBES moved the second reading of the Bill "to amend Act XXII of 1855 (for the regulation of Ports and Port dues)."

The Motion was carried, and the Bill read a second time.

PUBLIC CONVEYANCES.

MR. LEGEYT moved the second reading of the Bill "for regulating Public Conveyances in the Towns of Calcutta, Madras, and Bombay, and the several Stations of the Settlement of Prince of Wales' Island, Singapore, and Malacca."

MR. HARINGTON said, he had carefully considered all that was urged in favor of this Bill by the Honorable Member for Bombay at the time that he introduced it to their notice. He had also read the Bill itself and the Statement of objects and reasons since printed and circulated, together with the petition from certain inhabitants of Calcutta, which was presented to the Council before the Bill was brought in, and the extract from the Report of the Municipal Commissioners for the year 1857, and the letter

from the Governor of the Straits Settlement, which formed the annexures to the Bill; but he must confess that he had been unable to discover in these papers any sufficient ground for their coming to a different conclusion from that arrived at by the late Honorable Member for Bengal, who, with that sound judgment and practical wisdom which exhibited themselves in all that he did, objected to any legislation for the purpose of fixing the fares for carriages let off hire, considering "that the moderate rates of charge and the active competition which kept down those rates, did not indicate any necessity for the action of Government in the very questionable direction of an interference with the natural adjustment of wages and profits." The Honorable Member for Bombay seemed to think that the natural adjustment, so confidently looked forward to by the late Honorable Member for Bengal, was still far in the future and might never be attained, and he had assigned this as one of his reasons for introducing this Bill at the present time; he had also referred to the petition, which, as already stated, was presented to the Council by certain inhabitants of Calcutta before the Bill was brought in; but what did the petitioners ask for—why, their principal request seemed to be that the rate of hire for a whole day for the class of carriages to which their petition related, should be fixed by law at a sum one-third lower than the rate which the Municipal Commissioners in their Report had pronounced to be a fair and reasonable rate, or one with which no fault could be found, and they made this request, notwithstanding that, since the date of the Municipal Commissioners' Report, almost every article of food had nearly doubled itself in price, horses and ponies cost much more, and wages were generally higher. A rate of hire, then, considered by the Municipal Commissioners to be fair and proper, was one of the public grievances from which these Calcutta petitioners prayed to be relieved by legislative enactment. The Honorable Member for Bombay did not say that higher rates were now demanded than at the time when the Municipal Commissioners gave it as their opinion that no fault could be found with the rates charged; and, looking to the increase which, as he had said, had taken place in the price of almost all articles of food and of ponies and horses, and in the rates of wages, he certainly thought they might assume that a maximum rate of hire had been attained, and that, to some extent at least, the expectation expressed by the late Honorable Member for Bengal had been realised. So much then of the ground on which the Honorable Member for Bombay had asked them to pass this Bill was cut away from beneath them.

The Bill brought in by the Honorable Member for Bombay related to three descriptions of hired conveyances, namely, wheeled carriages, boats, and palankeens; but neither in the petition from the inhabitants of Calcutta, nor in the extract from the Report of the Municipal Commissioners, on which stress had been laid by the Honorable Member for Bombay, was any mention made of the last two descriptions of conveyances, and in so far, therefore, as the public voice was concerned, there appeared to be no ground for any legislative interference in respect to them. He believed he was right in saying that a respectable palankeen could, at all times, or nearly always, be obtained in any part of Calcutta at a moderate rate of hire, and that the bearers were generally willing and obliging. Why then, it might be asked, were they to invest the Municipal Commissioners, or the Commissioner of Police, with power to fix the rate of hire at which the owners or bearers of these conveyances were to give their services and the use of their palankeens to the public? Then, as regarded boats, there was already a law which required that all boats let for hire should be registered and numbered. This law had been for some time in force, and he was not aware that any complaints had been made against it. Its provisions corresponded very much with that part of the Bill brought in by the Honorable Member for Bombay which related to the same description of public conveyances; the Honorable Member, however, wished to go farther, and to give the Commissioner of Police power to fix the rate of hire at which boats should be let; but he (Mr. Harington) could see no more reason for the Commissioner of Police having this

power in respect to boats than in respect to palankeens. He thought that any one who had been in the habit of visiting the public ghâts of Calcutta would agree with him that there was no difficulty in hiring any number of boats; the only difficulty was to avoid having to engage all the boats at the ghât, so importunate were the owners, so anxious for a fare—but this, however disagreeable, would not be prevented by the present Bill.

To return to wheeled carriages. In order, he supposed, that the European livery stable-keepers might be excluded from the operation of the Bill, the Honorable Member for Bombay had so framed it that, according to his (Mr Harington's) view, its provisions would reach few, if any, of the numerous hired carriages which traversed the Town of Calcutta at all hours of the day and night, to the great convenience, as he thought, of the citizens and of visitors, but against which the complaint of the Municipal Commissioners and the Calcutta petitioners seemed to be especially directed. If he rightly understood the second Section of the Bill, the Commissioner of Police would have no power to fix the rate of hire of any carriage which did not stand or ply in the streets for hire; nor would any carriage require to be registered and numbered under the Bill which was not let for any time less than a day. Unconvinced by any thing that had been said of the necessity of passing this Bill, he did not consider himself called upon to object to this particular part of it; but would it satisfy those who complained of the present state of things? Looking to their demands, it occurred to him (Mr Harington) that they would scarcely care to have the Bill in the form in which it was now drawn, and he must confess that it was not of that large and comprehensive character which he, for one, had been led to expect from what the Honorable Member for Bombay had stated at the time of its introduction Where stands were allotted in the public streets for hired carriages, it might be very right and proper that the owners of the carriages which plied for hire on those stands should be subjected to certain rules; but he was informed that the number of carriages which actually plied for hire in the streets of Calcutta was comparatively small; that the charges made for them were generally moderate, and that the drivers of these carriages were not the persons whose conduct was complained of. In support of what he had just said, he might mention that he had been told by a gentleman who occasionally visited him from Barrackpore, and who generally travelled by rail, that he never experienced any difficulty in getting a hired carriage with a single horse on reaching the ghât on the Calcutta side of the river, that the carriage conveyed him wherever he wished to go during the day, and took him back to the ghât in the evening, and that for the whole day's work he never paid more than two rupees, with which the driver was quite satisfied. Surely there was no cause for complaint, no ground for legislation here But what the Calcutta petitioners required was that the native livery stable-keepers who, for the most part, kept their carriages and horses under sheds, and who were stated by the Municipal Commissioners, by a strange misapplication of terms, to "carry on a nefarious monopoly," though in what their monopoly consisted he (Mr. Harington) had been unable to discover—should be compelled to let their carriages for such times and at such rates as the petitioners might consider proper. No such demand was made in respect of the European livery stable-keepers, though, if any monopoly existed, they not only shared in it, but they certainly had a monopoly of high prices, as any one must know to his cost, who had been in the habit of hiring carriages from both the European and Native livery stable-keepers.

He (Mr. Harington) should have no objection to a law being passed, which should require that all hired conveyances, of whatever description, and by whomsoever owned, should be licensed, registered, and numbered; and it might also be proper to require that a table of their rates of hire should be stuck up in some conspicuous place, either where the conveyances were kept, or in the conveyances' themselves. He thought that a law of this character would be very advantageous and useful to the public; but it was obvious that the Bill brought in by the Honorable Member of Bom-

bay contained no provisions whatever as regarded the great majority of carriages let out for hire in this city, and as while it omitted legislation where it appeared to him (Mr. Harington) it might be usefully, beneficially, and properly had recourse to, it comprised provisions, of the necessity or propriety of which he was not satisfied, he did not feel disposed to vote for the second reading of the Bill. As regarded Bombay, he wished to observe that the changes which would be introduced into that Presidency, in the event of this Bill being substituted for the law now in force there, would not be for the advantage of the Bombay Community, and if they should be consulted on the subject, he thought they would prefer to retain their present law.

MR. LEGEYT said, he did not exactly understand whether the Honorable Member, who had just spoken, opposed the entire principle of the proposed measure, or only the form and framing of this particular Bill. If the latter, then he (Mr. LeGeyt) thought that all that had been brought forward by the Honorable Member would be more fully and far better discussed by the Select Committee, to whom the Bill would be referred, if the Council allowed it to be read a second time and published for general information. But in case his Honorable friend intended to oppose the second reading, he (Mr. LeGeyt) would proceed to answer shortly some of the objections which had been urged.

The Bill did not propose to reduce or fix the rates. He had expressly stated, on introducing the Bill, that this would be better done by the local authorities.

Then it was said that the Bill should apply, or rather that the principle of registration should be extended, to all classes of conveyances. He (Mr. LeGeyt) confessed he saw no good ground for including all classes of conveyances within the provisions of the Bill. This Bill was intended to regulate the conduct of the drivers and the condition of the carriages, which are engaged by the hour or by courses, and which are generally known under the name of Hackney-carriages. This description of conveyance is regulated in all large civilised towns, instead of leaving their employers to the mercy or whims of the drivers or owners of the vehicles, which he believed was found to be a source of great inconvenience in this city. Those who were in the habit of using such conveyances experienced great annoyance and trouble as to the amount of fares to be paid by them. A driver had no right, when he either occupied a public stand or plied along a public street ready to engage a fare, to hesitate or refuse to be hired when the customary fare was offered. He had been informed that it was a common practice with the drivers of these carriages to leave those who had hired and paid for them at shop-doors and other places, and decamp. It was to prevent annoyances of this nature, which this Bill was intended to provide.

With regard to what the Honorable Member had said about Bombay, he (Mr. LeGeyt) would only observe that, if the Bill were allowed to be read a second time, it would be seen how it would be received by the community at Bombay. In his (Mr. LeGeyt's) opinion, it would be an improvement on the existing law; and, at any rate, an alteration of the existing law in Bombay was necessary, as it directed certain things to be done by an Officer whose appointment had, for some time past, ceased to exist. He therefore hoped the Council would allow the Bill to be read a second time.

The question being put, the Council divided—

Ayes 4.	*Noes* 3.
Mr. Sconce.	Mr. Forbes.
Sir Charles Jackson.	Mr. Harington.
Mr. LeGeyt.	Mr. Peacock.
Sir James Outram.	

So the Motion was carried, and the Bill read a second time.

ESTATE OF THE NABOB OF SURAT.

MR. LEGEYT moved that the Report of the Select Committee on the Bill "to amend Act XVIII of 1848 (for the administration of the estate of the late Nabob of Surat and to continue privileges to his family)" be adopted.

Agreed to.

TRIALS BY SESSION JUDGES.

MR. HARINGTON moved that the Bill "to enable Session Judges to pass

sentence in certain cases without reference to the Sudder Court" be referred to a Select Committee, consisting of Mr. Forbes, Mr. Sconce, and the Mover.

Agreed to.

PORTS AND PORT-DUES.

MR. FORBES moved that the Bill "to amend Act XXII of 1855 (for the regulation of Ports and Port-dues)" be referred to a Select Committee, consisting of Mr. Harington, Mr. Sconce, and the Mover.

Agreed to.

MR. FORBES said, when Act VII of 1858, which provided for the levy of Port dues and fees within the Presidency of Madras, was under consideration, more than one representation was received from the Chamber of Commerce at Cochin of the evils that would result to that Port from an enforcement of that Section of the Act which provided that half the ordinary amount of Port-dues should be collected from vessels which do not even break bulk, or land or take in a passenger.

The Chamber represented that Cochin was the chief place of export for the produce of the Malabar Coast, and that the greater part of the tonnage required by merchants was obtained by means of what were called seeking ships, that is, ships which came into Port to seek for freight without having any actual engagement, and it was urged that, with the choice of Bombay on the one side and Ceylon on the other, no ship would incur the certainty of having to pay Port-dues at Cochin, when it was doubtful whether she would after all obtain freight or not.

The Chamber, in an address presented to the Government of Madras after the Act was passed, showed that it had inflicted on Cochin considerable injury, as the Peninsular and Oriental Company had at once refused to allow their steamers to call at the Port on their passage to and from Bombay and Galle, as they had been accustomed to do, owing to the liability they incurred for Port-dues, however few might be the number of hours they remained in the Port, and whether they derived any benefit from calling at Cochin or not.

This last address was not transmitted to this Council by the Government of Madras, because the original representation of the Chamber of Commerce had been already forwarded, and because the measure against which the Chamber protested had already become law. Their representation, however, having gone home as a part of the proceedings of the Government, had attracted the attention of the Secretary of State, and in a Despatch, dated the 7th of April last, Lord Stanley suggested that it should be sent to the Member of this Council representing the Madras Presidency.

He had looked over all that was recorded in connection with Act VII of 1858, and he must say that he was left under the impression that the mercantile community of Cochin had good ground for the representation they had made. The Section in the Act which makes ships liable to half dues, even though they do not break bulk, or land or take in a passenger, appeared to have been passed with sole reference to the Port of Madras, and in consideration of the great advantage which all vessels, whether breaking bulk or not, unquestionably derived from the admirable Light which is shown at that Port, and this was no doubt a substantial and good ground for taxing vessels coming into Madras. But at Cochin the argument did not apply, the Port had no Light-house, and vessels merely coming in to ask if there be freight for them or not could not, he thought, be said to derive such an advantage from anchorage in an open roadstead as to make it just to put a tax upon them. In fact, the law defeated its own end, for the result was that vessels did not come to Cochin, and what would otherwise be a thriving and a rising place, was depressed by the existence of a law passed with the sole view of providing means for the improvement of a Port which the law itself prevented ships from frequenting.

He had said that the Memorial of the Chamber of Commerce had now been sent to him at the suggestion of the Secretary of State, and as a Bill to amend Act XXII of 1855 had just been read a second time and referred to a Select Committee, he should move that these papers connected with Act VII of 1858, which was a part of, and was to be read with, Act XXII of 1855, be

referred for consideration and report to the same Committee.

Agreed to.

PUBLIC CONVEYANCES.

MR. LEGEYT moved that the Bill "for regulating Public Conveyances in the Towns of Calcutta, Madras, and Bombay, and the several stations of the Settlement of Prince of Wales' Island, Singapore, and Malacca" be referred to a Select Committee, consisting of Sir Charles Jackson, Mr. Forbes, Mr. Sconce, and the Mover.

Agreed to.

MR. FORBES moved that the Council be adjourned for ten minutes.

Agreed to.

The Council resumed its sitting pursuant to adjournment.

ESTATE OF THE LATE NABOB OF THE CARNATIC.

THE VICE-PRESIDENT announced that the Governor-General had signified his assent to the Bill "to explain Act XXX of 1858 (to provide for the administration of the Estate and for the pyment of the debts of the late Nabob of the Carnatic)."

The Council adjourned.

Saturday, June 25, 1859.

PRESENT:

The Hon'ble the Chief Justice, *Vice-President*, in the Chair.

Hon. Lieut.-Genl. Sir James Outram,	H. Forbes, Esq.,
Hon. H. B. Harington,	Hon. Sir C. R. M. Jackson,
P. W. LeGeyt, Esq.,	and
	A. Sconce, Esq.

MALABAR OUTRAGES.

MR. FORBES moved that a communication received by him from the Madras Government be laid upon the table and referred to the Select Committee on the Bill "for the suppression of Outrages in the District of Malabar in the Presidency of Fort St. George."

Agreed to.

STAMPS.

MR. SCONCE gave notice that he would, on Saturday next, move the first reading of a Bill to amend the laws relating to Stamps.

SALT DUTIES (MADRAS).

MR. FORBES gave notice that he would, on the same day, move the first reading of a Bill to collect a duty of Excise on Salt manufactured in the Presidency of Fort St. George.

POLICE (PRESIDENCY TOWNS AND STRAITS SETTLEMENT).

MR LEGEYT moved that a communication received by him from the Bombay Government be laid upon the table and referred to the Select Committee on the Bill "to amend Act XIII of 1856 (for regulating the Police of the Towns of Calcutta, Madras, and Bombay, and the several Stations of the Settlement of Prince of Wales' Island, Singapore, and Malacca)."

Agreed to.

BOMBAY ABKAREE REVENUE.

MR. LEGEYT gave notice that he would, on Saturday next, move the first reading of a Bill to amend the law for the realization of Revenue from Abkaree in the Island of Bombay.

The Council adjourned.

*** *This leaf to be cancelled on the issue of Part VII.*

sentence in certain cases without reference to the Sudder Court" be referred to a Select Committee, consisting of Mr. Forbes, Mr. Sconce, and the Mover.

Agreed to.

PORTS AND PORT-DUES.

MR. FORBES moved that the Bill "to amend Act XXII of 1855 (for the regulation of Ports and Port-dues)" be referred to a Select Committee, consisting of Mr. Harington, Mr. Sconce, and the Mover.

Agreed to.

MR. FORBES said, when Act VII of 1858, which provided for the levy of Port-dues and fees within the Presidency of Madras, was under consideration, more than one representation was received from the Chamber of Commerce at Cochin of the evils that would result to that Port from an enforcement of that Section of the Act which provided that half the ordinary amount of Port-dues should be collected from vessels which do not even break bulk, or land or take in a passenger.

The Chamber represented that Cochin was the chief place of export for the produce of the Malabar Coast, and that the greater part of the tonnage required by merchants was obtained by means of what were called seeking ships, that is, ships which came into Port to seek for freight without having any actual engagement, and it was urged that, with the choice of Bombay on the one side and Ceylon on the other, no ship would incur the certainty of having to pay Port-dues at Cochin, when it was doubtful whether she would after all obtain freight or not.

The Chamber, in an address presented to the Government of Madras after the Act was passed, showed that it had inflicted on Cochin considerable injury, as the Peninsular and Oriental Company had at once refused to allow their steamers to call at the Port on their passage to and from Bombay and Galle, as they had been accustomed to do, owing to the liability they incurred for Port-dues, however few might be the number of hours they remained in the Port, and whether they derived any benefit from calling at Cochin or not.

This last address was not transmitted to this Council by the Government of Madras, because the original representation of the Chamber of Commerce had been already forwarded, and because the measure against which the Chamber protested had already become law. Their representation, however, having gone home as a part of the proceedings of the Government, had attracted the attention of the Secretary of State, and in a Despatch, dated the 7th of April last, Lord Stanley suggested that it should be sent to the Member of this Council representing the Madras Presidency.

He had looked over all that was recorded in connection with Act VII of 1858, and he must say that he was left under the impression that the mercantile community of Cochin had good ground for the representation they had made. The Section in the Act which makes ships liable to half dues, even though they do not break bulk, or land or take in a passenger, appeared to have been passed with sole reference to the Port of Madras, and in consideration of the great advantage which all vessels, whether breaking bulk or not, unquestionably derived from the admirable Light which is shown at that Port, and this was no doubt a substantial and good ground for taxing vessels coming into Madras. But at Cochin the argument did not apply, the Port had no Light-house, and vessels merely coming in to ask if there be freight for them or not could not, he thought, be said to derive such an advantage from anchorage in an open roadstead as to make it just to put a tax upon them. In fact, the law defeated its own end, for the result was that vessels did not come to Cochin, and what would otherwise be a thriving and a rising place, was depressed by the existence of a law passed with the sole view of providing means for the improvement of a Port which the law itself prevented ships from frequenting.

He had said that the Memorial of the Chamber of Commerce had now been sent to him at the suggestion of the Secretary of State, and as a Bill to amend Act XXII of 1855 had just been read a second time and referred to a Select Committee, he should move that these papers connected with Act VII of 1858, which was a part of, and was to be read with, Act XXII of 1855, be

referred for consideration and report to the same Committee.

Agreed to.

PUBLIC CONVEYANCES.

MR. LEGEYT moved that the Bill "for regulating Public Conveyances in the Towns of Calcutta, Madras, and Bombay, and the several stations of the Settlement of Prince of Wales' Island, Singapore, and Malacca" be referred to a Select Committee, consisting of Sir Charles Jackson, Mr. Forbes, Mr. Sconce, and the Mover.

Agreed to.

MR. FORBES moved that the Council be adjourned for ten minutes.

Agreed to.

The Council resumed its sitting pursuant to adjournment.

ESTATE OF THE LATE NABOB OF THE CARNATIC.

THE VICE-PRESIDENT announced that the Governor-General had signified his assent to the Bill "to explain Act XXX of 1858 (to provide for the administration of the Estate and for the payment of the debts of the late Nabob of the Carnatic)."

The Council adjourned.

Saturday, June 25, 1859

PRESENT:

The Hon'ble the Chief Justice, *Vice-President*, in the Chair.

Hon. Lieut.-Genl. Sir James Outram,	H. Forbes, Esq.,
Hon. H. B. Harington,	Hon. Sir C. R. M. Jackson,
P. W. LeGeyt, Esq.,	and
	A. Sconce, Esq.

MALABAR OUTRAGES.

MR. FORBES moved that a communication received by him from the Madras Government be laid upon the table and referred to the Select Committee on the Bill "for the suppression of Outrages in the District of Malabar in the Presidency of Fort St. George."

Agreed to.

Mr. Forbes

STAMPS.

MR. SCONCE gave notice that he would, on Saturday next, move the first reading of a Bill to amend the laws relating to Stamps.

SALT DUTIES (MADRAS).

MR. FORBES gave notice that he would, on the same day, move the first reading of a Bill to collect a duty of Excise on Salt manufactured in the Presidency of Fort St. George.

POLICE (PRESIDENCY TOWNS AND STRAITS SETTLEMENT).

MR LEGEYT moved that a communication received by him from the Bombay Government be laid upon the table and referred to the Select Committee on the Bill "to amend Act XIII of 1856 (for regulating the Police of the Towns of Calcutta, Madras, and Bombay, and the several Stations of the Settlement of Prince of Wales' Island, Singapore, and Malacca)."

Agreed to.

BOMBAY ABKAREE REVENUE.

MR. LEGEYT gave notice that he would, on Saturday next, move the first reading of a Bill to amend the law for the realization of Revenue from Abkaree in the Island of Bombay.

The Council adjourned.

Saturday, July 2, 1859.

PRESENT:

The Hon'ble the Chief Justice, *Vice-President*, in the Chair.

Hon. Lieut.-Genl. Sir J. Outram,	H. Forbes, Esq.,
Hon. H B. Harington,	Hon. Sir C. R. M. Jackson,
P. W. LeGeyt, Esq.,	and
	A. Sconce, Esq.

SMALL CAUSE COURTS.

THE CLERK presented to the Council a Petition of the British Indian Association relating to the Bill "for the establishment of

Courts of Small Causes beyond the local limits of the jurisdiction of the Supreme Courts of Judicature established by Royal Charter" as settled in Committee of the whole Council.

MR. HARINGTON moved that the Petition be printed.

Agreed to.

ENGLISH PASSENGERS ACT.

THE CLERK reported to the Council that he had received, from the Home Department, a Despatch from the Secretary of State for India, suggesting the extension to India of the provisions of Sections LII to LV of the English Passengers Act, 18 and 19 Vic. c. 119.

MR. HARINGTON moved that the above communication be printed.

Agreed to.

EXECUTION OF MOFUSSIL PROCESS (STRAITS).

THE CLERK reported that he had received a communication from the Foreign Department relative to the extension to the Straits Settlement of Act XXIII of 1840 (for executing, within the local limits of the jurisdiction of Her Majesty's Courts, legal Process issued by authorities in the Mofussil).

MR. PEACOCK moved that the above communication be printed.

Agreed to.

OATHS AND AFFIRMATIONS.

THE CLERK reported that he had received, from the Home Department, an Extract of a Despatch from the Secretary of State for India, relative to the Bill "concerning oaths and affirmations."

MR. FORBES moved that the above communication be printed.

Agreed to.

SMALL CAUSE COURTS.

THE CLERK reported that he had received, from the Home Department, an Extract of a Despatch from the Secretary of State for India, relative to the Bill "for the establishment of Courts of Small Causes beyond the local limits of the jurisdiction of the Supreme Courts of Judicature established by Royal Charter."

MR. HARINGTON moved that the above communication be printed.

Agreed to.

STAMPS.

MR. SCONCE moved the first reading of a Bill "to consolidate and amend the laws relating to Stamps." He said that the Bill which he now had the honor to bring to the notice of the Council had for its main object to consolidate, amend, enlarge, and generally to enforce the operation of the Stamp Laws. He should have wished that, as was at one time expected, the Council had had the benefit of the greater authority of an Honorable Member of this Council, whose absence they had so much cause to regret, in the introduction of the Bill. But as the duty had devolved upon him, he would now, with the indulgence of the Council, state shortly the general topics to which the Bill related.

It was a Bill, as he had said, to consolidate and enlarge the Stamp Laws, but the subject matter of the Bill did not embody and could not disclose the object of the proposed enactment. He need hardly say that the leading motive of the Bill, but for which the amendment of the law would not have been probably at this moment attempted, was, if possible, in some degree to increase the resources of the Government, a subject which it was scarcely necessary for him to dwell upon. It was generally understood how necessary it was to relieve the pressure under which the Government now lay, and it was probably sufficient for him to recall to the recollection of the Honorable Members the exposition of the financial circumstances of the Government which had been laid before the Council four months ago by His Excellency the Governor-General.

As to the Stamp Law, it was well known that it operated and became productive in two general forms. In one form, it affected a vast number of transactions and situations in which mankind were placed towards each other or themselves. It generally affected monetary transactions; and it

touched, in some degree, the capital of the capitalists, the profit of the merchant and trader, and the income of the consumer. It was too much to expect that it would always work with entire impartiality; hardly any tax did so. Nor did it pretend to touch all capital, profits, or income without exception; but from the number of persons of all classes who were affected by the application of the law, and from the universality of its operation, it might fairly be said to have a very wide and general application.

The second form in which the law acted might not possibly be said to be of so unexceptionable a character. He alluded to the Stamps used in judicial proceedings. The operation of the tax in this sense was often said to be a tax upon redress of wrong, and an impediment to the proper administration of justice. But the question had another side. Where there was wrong to be redressed, there was a wrong-doer; and it might be not unfairly argued that, as ultimately the result of litigation was to cast the costs of suit on the party who had done the wrong, the imposition of a Stamp Duty upon the institution of a suit was relieved from an injurious operation. On the other hand, even admitting that the use of stamp paper in suits affected the resources of suitors, there was, he might venture to say, very much reason to be assured that the doors of the Courts of Justice were not sensibly straightened by the operation of the Stamp Law, and certainly that suitors generally disbursed their money with a facile affluence which did not by any means support the supposition that to be relieved from the charge of an institution-stamp was to them a material object of economy. But this question he did not propose to bring now to an issue. The Bill which he held in his hand was a Bill to increase, not to forego, public revenue. The sacrifice which the adoption of the principle now referred to would entail, was of too serious a nature to be at this moment submitted for the consideration of the Council. He found from the latest Returns available to him that the total revenue derived from stamps during the year 1856-57 yielded somewhat more than sixty lakhs; and as it was estimated on very exact data that stamps used in judicial proceedings furnished at least one-half of the entire revenue, it followed that a proposition to abandon this portion of the public revenue would entail a loss to the State of thirty lakhs. It seemed to him, therefore, that whatever ground there might be on any future occasion for re-considering the principle of this tax, it was not at the present moment that the question could be entertained.

But while he did not propose to reduce, at the same time he did not propose to increase, this branch of the Stamp Revenue. The area of taxation would continue as before. The Presidency Towns of Calcutta, Madras, and Bombay, under the jurisdiction of the Supreme Courts of Judicature, which had hitherto been exempted from the use of Stamps in the conduct of judicial proceedings, would continue to be so exempted. But as regards the Local Courts, without, as he had said, enhancing the weight of the tax, it appeared to him that a beneficial change might well be adopted in the mode of its application. The revenue received through judicial proceedings was, as the Council was aware, derived for the most part from Stamps used in petitions of plaint and of appeal. In Bengal and Madras the same scale of taxation is followed, and though within the Presidency of Bombay the scale of values determining the tax was somewhat different, practically the duty charged very closely corresponded with that charged in the other Presidencies.

It seemed to him, however, that, as regards all the Presidencies, the scheme of taxation was very unequal in its operation, and (he feared) that inequality was indicative of unfairness, and unfairness of injustice. First, he apprehended that the present system was unjust from the severity with which suits for smaller values were taxed, compared with suits of larger values. Suits for smaller values, for example, suits for a hundred and sixty Rupees or three hundred and twenty Rupees were assessed at ten per cent.; but as the value of the suit increased, the percentage of taxation diminished from ten to six, five, four, and eventually, when the value of the subject of the suit was eight thousand Rupees, to three per cent. But not only was the difference in the taxation of the

smaller and the larger suits excessive, but within smaller limits the operation of the tax was exceedingly unequal. For example, all suits of values varying from three hundred to eight hundred Rupees were subject to a stamp of thirty-two Rupees, that is, a suit for three hundred and twenty Rupees and a suit for seven hundred and eighty Rupees were charged at institution with one and the same stamp. In an attempt, therefore, in some degree to mitigate the severity, and correct the inequality of the present system, he ventured to propose the substitution of the Schedule which appears in the present Bill.

He proposed a general rating of five per cent. to operate as follows:—On all suits up to the value of one hundred Rupees, he proposed that on every sum of ten Rupees a tax of eight annas or five per cent. should be charged; that is, eight annas on suits from ten to twenty Rupees, one Rupee on suits from twenty to thirty Rupees, and so on. Again, that in suits from the value of one hundred Rupees, to the value of five hundred Rupees, on every additional sum of twenty Rupees one Rupee additional tax, that is five per cent., should be imposed. Again, that in suits from the value of five hundred Rupees up to one thousand Rupees, for every additional sum of fifty Rupees an additional tax of two Rupees and eight annas or five per cent. should be charged; and after the same rate an additional charge of five Rupees on every additional sum of one hundred Rupees from a suit of the value of one thousand Rupees up to the value of ten thousand Rupees. Finally, as regarded suits exceeding in value ten thousand Rupees, it was proposed that five per cent. should be charged up to ten thousand Rupees, and two-and-a-half per cent. on every additional sum of one hundred Rupees above that amount.

The result of this change would be probably to leave the revenue derived from stamps in the course of judicial proceedings about the same amount as at present. In the details of receipts there would be necessarily considerable alteration In the revenue derived from suits instituted in Moonsiffs' Courts in Bengal, there would be a falling off, as nearly as he was able to estimate, of somewhat more than a lakh of Rupees. So in suits within the jurisdiction of Sudder Ameens, there would be a falling off of about fifteen thousand Rupees; but on the other hand, in suits of a value exceeding ten thousand Rupees, he estimated the gain to exceed one lakh of Rupees. Upon the whole, then, looking to the relief which the change proposed was calculated to bestow on the large number of persons interested in actions of smaller value, it seemed to him that the new Schedule was well worthy of being adopted by the Legislature.

In some respects there was a striking inequality in the application of the stamp tax to the three Presidencies, or in the actual law of this Presidency as compared with that in force in Madras and Bombay. In Bengal petitions presented in the Criminal Courts and to Collectors were required to be written on stamp paper, and he could not doubt that the duty realized from them contributed very materially to the general revenue. But there was no such requirement of the law in the other Presidencies, and this of itself exhibited an objectionable inequality, which, in consideration of the public exigencies, no attempt had been made to correct.

He would now proceed to notice the law as it affected general transactions. The stamps realized on this head were known in this part of India as comprised in Schedule A Regulation X. 1829. By Regulation XII. 1826 Stamp Duties were leviable within the town of Calcutta; but no similar law existed for the towns of Madras and Bombay. Generally stamps were realized in such transactions throughout the Bengal Presidency. As far as Calcutta was concerned, a sum of about one lakh of Rupees was annually levied from stamp paper. But though a law existed for the use of stamps within that town, it was more optional than imperative, for instruments not unstamped were not held, in actions tried by the Supreme Court, to be inadmissible as evidence; and the object of this Bill was to extend the law generally throughout the Presidencies and the Presidency Towns, by providing that no unstamped deed or instrument, which the law might require to be stamped, should be entitled to be produced in

evidence before any Court of Justice. But there were many classes of cases in which the parties concerned did not look to the admissibility of the deed as evidence; in these cases the trust and confidence of people in each other took the place of the motives which influenced them in the use of stamps in other cases. To give effect to such instruments as bonds or deeds of sale, the parties holding these deeds had to rely on the protection of the Courts. But there were others, such as bills and receipts, which, in dealing with each other, were accepted without the guarantee which stamps afforded. On this ground it seemed to have become necessary to make the law more stringent, and it was proposed to declare any person liable, upon the prosecution of the Collector of Stamps, to the imposition of a penalty upon the making or execution of a deed on unstamped paper or on paper of an inadequate stamp.

The law also sought to avail itself of another means of compelling the use of the stamps prescribed. It was well known that, under certain circumstances, instruments which had not been written on stamped paper might, under the specific conditions laid down in the law, be stamped if produced for that purpose within three months from the date of their issue, and in others if produced beyond three months. But the change now proposed was that, after the lapse of six months from the date of the promulgation of the Act, or after three months from the date of execution, no unstamped deed should be entitled to the benefit of being stamped. In the latter case it was possible to conceive that some opposition might be offered to a stringent enforcement of this rule. But as far as he was able to learn, the benefit to be derived from a looser wording of the old law was very limited, for it appeared that in the course of a whole year no more than six thousand Rupees had been derived from this source.

As to the details of the Schedule hitherto in force, a material difference was observable between the rates charged in Bengal, and the rates charged in Madras and Bombay. In Bengal there was a Schedule of discriminative rates for the different classes of documents stamped, whereas in the other two Presidencies all classes of instruments were taxed at one and the same rate of percentage. Uniformity of practice, however, was preferable to diversity; and other reasons arising upon the merits of the measure enforced the same principle of adopting one common law. Of these, the most prominent was the proposal to charge one anna stamps on all drafts or orders for money payable to the bearer on demand, and on all receipts for money paid to the amount of ten Rupees or upwards. The principle of this measure was to raise, it was hoped, a considerable amount of revenue by imposing a minimum charge on individuals, and it seemed indispensable to introduce it, not in one Presidency, but in all. In England, as he understood, for the year 1857, from one-penny duties collected upon receipts and orders for money, the sum of £2,77,000 was realized, and without assuming that statement as any positive basis for estimating the revenue to be received under the same head in India, it seemed to justify the expectation of the productiveness of the tax.

Another reason he would venture to adduce in support of the proposal of assimilating the rates of duty was that the scale of duties levied in Madras and Bombay, as compared with the scale of duties charged in Bengal, was excessively low. For example, as regards bonds, whereas in Bengal a bond varying in value from three hundred Rupees to five hundred Rupees was charged with four Rupees stamp, the same bond was charged in Madras and Bombay with one Rupee stamp; and in Bengal while a bond not exceeding one thousand Rupees was charged with a six Rupees stamp, the same bond in the other Presidencies would be charged with a two Rupees stamp. Then, as regards Conveyances, a Deed of Sale, for example, for five thousand Rupees in Bengal gave twenty Rupees Stamp Duty whereas in Madras and Bombay the Duty levied was only eight Rupees. It seemed desirable, therefore, not to reduce the Bengal Duty, but to place the Madras and Bombay Duty upon an equality with it.

Besides, as regards more important mercantile transactions, it appeared to be essential to have one scale and one law applicable to the various

cases throughout the three Presidencies.

The only exception made as regards the three Presidencies fell under the head of Leases. In Bengal only those leases were exempted from Duty which took effect between a landholder and the actual cultivator of the soil; whereas in Madras and Bombay, all leases between landlord and tenant, with respect to land paying revenue to Government, were exempt from Stamp Duty, and in Bombay the same exemption was recognized with respect to leases made within lands which contributed no revenue to Government. This last exemption, as regards lakhiraj lands, the Bill proposed to disallow, but the present law was in other respects continued.

One other matter of detail might perhaps be mentioned. He alluded to the composition on the issue of Bank Notes. These seemed to be proper exceptions to the rate ordinarily chargeable as Notes and Bills, from the repeated circulation of Notes from hand to hand, and from the facility of re issuing them. The proposal of the Bill therefore was that all Banks of issue should pay five annas per cent. per annum upon the value of the Notes issued by them, and in circulation during the year. This charge closely approximated the rate of Duty taken in England, which amounted to seven shillings per cent. on the circulation of Notes per annum.

On the whole, he was unable to offer any opinion as to the results to be expected from the changes proposed. He had already mentioned that the receipts for the use of Stamps in Calcutta alone, under a law of very imperfect obligation, amounted to a lakh of Rupees. From Bills of Exchange, whether Inland or Foreign, a considerable amount was expected to be realized. He had much reason to believe that Foreign Bills alone drawn abroad amounted to twenty millions annually; and as upon an average the Duty levied upon Bills of Exchange, varied from one anna per cent. to two annas per cent., the Duty realized upon the above sum should yield at least a lakh or a lakh and twenty-five thousand Rupees.

These appeared to him to be clearly the points which only required to be noticed; and he should accordingly now move the first reading of the Bill.

The Bill was read a first time.

EXCISE DUTY ON SALT (MADRAS).

MR. FORBES moved the first reading of a Bill "to collect a duty of excise on salt manufactured in the Presidency of Fort St. George." He said, the Council would remember that when the question of the renewal of the East India Company's Charter was under the consideration of Parliament in 1853, a Motion was carried in the House of Commons to require the early abandonment of the salt monopoly in India, and the substitution of a fixed excise. Although this requirement did not find a place in the Act which was finally passed, having been thrown out by the House of Lords, and its rejection having been acquiesced in by the House of Commons, still the Court of Directors of the East India Company, considering that it was probable that the subject would sooner or later be re-agitated, directed the Government of India to institute an enquiry into the practicability of carrying into effect any system under which, in the words of the Clause at first adopted by the House of Commons, "the manufacture and sale of salt in India shall be absolutely free, subject only to such excise as may now, or may from time to time, be levied."

This enquiry was, as is well known, entrusted to Mr. George Plowden, and the result was a very full and elaborate report with which, no doubt, Honorable gentlemen were familiar.

At present they had to deal only with the Presidency of Madras, and he would very briefly inform the Council of the system now in force in the South of India.

The salt revenue was there raised under a strict monopoly. By Regulation I. 1805 salt could be made only on account of Government. It was, when made, delivered to Government at a rate fixed for each district, but varying in different districts according to the expense of manufacture. The average cost to Government, including all items, was about two annas a maund. Dealers purchased salt at the Government stores, which were situated in the midst of the manufacture, at convenient distances all

down the Eastern Coast, and all salt purchased at a Government store was protected by a pass; no interference whatever was allowed with the retail sale, which, as regards price, place, quantity, and all other particulars, was conducted solely in accordance with what the dealer might consider to be his interest. The price at which Government sold the salt was one Rupee a maund, and the retail price of course varied with the distance of the place of sale from the place of manufacture.

After considering the system as just described, and after having considered and reviewed the excise system as in force in Bombay, the Commissioner, Mr. Plowden, made the following remarks in his report:—

"Regarded simply as a plan for the realization of an indispensable revenue, the salt monopoly under the Madras Presidency, as at present constituted, does not, it must be admitted, afford much room for practical objection. Salt of good quality is abundantly supplied by Government at a moderate fixed price, and the revenue is easily and cheaply collected; the exportation of salt by sea is now free from duty and all restrictions, and all foreign salt is admitted to competition with the home-made article on terms of perfect equality. Only the manufacture and first sale of salt are a Government monopoly. This is so far objectionable, that a Government monopoly in a great article of consumption, in any form or degree, and any participation of a Government, in the business of a trader, are such deviations from true principle, as cannot fail to be productive, directly or indirectly, of evil consequences. But the price of the salt being fixed, the Government possess no power of deriving a profit from the exclusive manufacture, which they might not equally derive under a free manufacture, and are only interested in maintaining the monopoly on the consideration that the same amount of revenue could not be raised so cheaply, and with so little inconvenience to the community, in any other manner. Whether this plea for continuing the monopoly is or is not well founded, appears to me to constitute the whole question to be determined in considering the practicability of substituting a system of excise upon the manufacture."

That was Mr. Plowden's view of the salt monopoly at Madras, that it was a deviation from right principle that Government should be in any way engaged in trade, that the departure from right principle became wider when the article traded in was one of prime necessity, and that the measure would be justifiable only if it could be shown that in no other way could so large a revenue as was derived from the salt monopoly be obtained at so small an amount of public inconvenience. At the same time Mr. Plowden admitted that the monopoly was well and fairly worked, that the salt sold was good and abundant, and that beyond the fact that the sale in the first instance was a monopoly, the salt trade was wholly free and unfettered.

He did not think that it was necessary that he should enter on any argument connected with the abandonment of the monopoly. It would be admitted that the Government was justified in applying to the Legislature for power to adopt its own method for realizing the public revenue, provided that the burdens of the people were not increased, and their convenience was not diminished. It was the declared wish of the Home Government that the salt monopoly should cease, and the Government of India had, in a recent Despatch, called the attention of the Madras Government to the subject, and requested that steps might be taken for gradually substituting an excise for the system at present in force.

This Bill had been prepared in consequence. Its main provisions were to establish a system of licenses, to be granted by Collectors for the manufacture of salt, all unlicensed manufacture being prohibited, and those carrying it on being subjected to penalty. As all the present places of manufacture are private property, and are frequently bought and sold, their owners having a vested pecuniary interest in them, it was provided that all holders of present salt pans shall be entitled to a license as a right; but for new works which it might be proposed hereafter to establish, the grant or refusal of a license would be determined by the question of whether the manufacture and sale at the particular place were likely to be sufficiently large for the Government to be compensated by the excise duty for the expense to which they would be put by keeping up a preventive force.

On the same ground it was provided that a license once given might be withdrawn if less than five thousand maunds of salt be manufactured on an average of

three consecutive years, and the license might also be withdrawn if the works for which it was given remained unused for three years.

The Bill provided that all salt should be brought to a Government store, and on being sold should be charged with the excise duty. A pass was to be given, which was to be delivered up at any one of the preventive stations which would be established round the works, and in its further progress, after passing the preventive station, the salt was to be subjected to no further interference whatever on the part of the Officers of Government.

The Bill continued the provisions of the present law, which allowed the Government to prescribe the route by which salt should be imported by land and the port at which it should be imported by sea, and also for the grant of drawback on any salt which might be exported after having paid the excise.

It further prescribed that certain penalties should be incurred by the violation of the conditions of license, or manufacture of salt without a license, by the importation of salt by land or sea by routes or at ports other than those prescribed by Government, by obstruction offered to any Revenue Officer in carrying out the Act, by refusal on the part of the Police to aid the Revenue Officers when called upon, and by corruption on the part of the Salt Officers by which the salt revenue might be affected.

In drawing the Bill he had adhered as closely as was possible to the existing excise law in Bombay and to Act XXI of 1856 for the consolidation of the Abkaree Revenue in Bengal.

The Bill was read a first time.

ABKAREE REVENUE (BOMBAY).

MR. LEGEYT moved the first reading of a Bill to amend the law for the realization of Revenue from Abkaree in the Island of Bombay. He said that it would be necessary to state, for the information of the Council, that the Abkaree for the Island of Bombay was quite distinct from that of the rest of the Bombay Presidency. It was limited to the produce of the Cocoanut, Brab, and Date trees growing in the Island. The tax at present levied under Regulation X. 1833 was three Rupees a year on each Cocoanut and each Brab tree, and eight annas a year on each Date tree. The late increase, however, in the Customs Duties on all importations of spirits into the Island of Bombay had materially affected the prices of those articles, and one of the objects of this Bill was to equalize the revenue derived from, and the prices charged for, spirits manufactured in the Island.

Brab trees in the Mahim District of the Island, which was an outlying District, were not included in the provisions of Regulation X. 1833. But no such exception had been made in this Bill, which gave a discretionary power to the Governor in Council to fix the fee or tax to be paid. At the same time it was proposed by the Governor in Council that the rates should be fixed experimentally, and it was estimated that the revenue expected to be derived would be about treble that now paid.

The present income from the Abkaree tax in the Island of Bombay amounted to eighty-nine thousand Rupees per annum, and it had been calculated that, after deducting the incomes from a number of trees which, under a higher scale of duty, would cease to be drawn, the tax would hereafter yield a revenue of about two lakhs of Rupees.

He was also requested to state that the present Bill was not entirely fiscal in its operation. The present law was defective in so far at least that it contained no provision for the punishment of those who worked without a license, and the Collector of Bombay had reported that he had lately discovered no fewer than sixty unlicensed stills. This defect the Bill proposed to remedy.

After briefly noticing the principal provisions of the Bill, Mr. LeGeyt said that this Bill had been prepared and forwarded by the Bombay Government to the Governor-General in Council. It had been approved by His Excellency, and had been referred to him from the Home Department, with the suggestion that the necessary measures should be taken for passing the Bill through its several stages, in order that the revised scale of Duties might be brought into operation from the commencement of the ensuing revenue year in August next.

He proposed, if the Council should allow the Bill to be read a second time next Saturday, to move the suspension of the Standing Orders with a view to the Bill being passed through all its stages forthwith, and to its coming into speedy operation.

The Bill was read a first time.

CIVIL PROCEDURE.

MR. HARINGTON moved the first reading of a Bill "to amend Act VIII of 1859 (for simplifying the Procedure of the Courts of Civil Judicature not established by Royal Charter)." He said, it was with much regret that he found himself under the necessity of asking the Council to give their consent to a modification of the new Code of Civil Procedure, although it had not yet come into operation in the Presidencies of Madras and Bombay, while in the Presidency of Bengal it had taken effect only under yesterday's date. It was, however, some satisfaction to him to think, and he believed that the feeling would be shared in by his Honorable colleagues, that the principal alteration which he was about to propose had not arisen from any thing that could properly be regarded as a defect in the Code, but that the change was forced upon them by circumstances which could not have been foreseen at the time they passed the Code, and over which they could exercise no control. The most important modification of the Code which now appeared necessary was in Section 332. The last Clause of that Section provided that, "If the appeal lay to the Sudder Court, it should be heard and determined by a Court consisting of three or more Judges of that Court." The Council had lately been informed that, at the present time, there was a very heavy arrear of regular appeals pending before the Sudder Court at Calcutta. Indeed, so large was the number of appeals of that description awaiting decision in the Court, that they were told that, at the present rate of working, it would take at least two years before they could be disposed of, and as the institutions exceeded the decisions, it was fully expected that, at the expiration of the period just mentioned, the arrear of new cases would be greater than that now existing.

Mr. LeGeyt

The Sudder Court, naturally unwilling that this unsatisfactory state of things should continue, had very properly gone up to Government with a recommendation that the Court should be strengthened by the appointment of additional Judges, but financial and other considerations, which it was not necessary for him particularly to notice, had prevented the Government from complying with this recommendation. In communicating the decision of the Government to the Sudder Court, the late Lieutenant-Governor of Bengal had, he believed, suggested the expediency of relieving that Court of some of the least important part of its work, the disposal of which he thought might be devolved upon other tribunals, and, accordingly, the late Honorable Member for Bengal brought in a Bill, under date the 30th April last, one of the Sections of which proposed that the regular appeal in all suits below the value of ten thousand Rupees, which might be disposed of in the Courts of the Principal Sudder Ameens, should be heard and determined by the Zillah Judge, thus modifying the existing law, which restricted the appellate jurisdiction of the Zillah Judges, in respect to the decisions of the Principal Sudder Ameens, to suits in which the amount or value of the property in litigation did not exceed the sum of five thousand Rupees. Shortly afterwards, with a view to relieve the Sudder Court on its Criminal side, he (Mr. Harington) introduced a Bill to empower Session Judges to pass sentence in certain cases which, under the law, as it now stood, required to be referred for the final orders of the Nizamut Adawlut. Both Bills were referred in the usual course to Select Committees, but the Select Committee on the Bill brought in by the late Honorable Member for Bengal had reported against it; and although he (Mr. Harington) had recorded his dissent from so much of the Report as related to the part of the Bill to which he had just alluded, it was not his intention, under existing circumstances, to offer any opposition to the Motion which would shortly be made for the adoption of the Report, and the Bill of the late Honorable Member for Bengal must therefore be considered to have been disposed

of. With regard to the Bill which he (Mr. Harington) had introduced, he had never attempted to conceal that the amount of relief which would be afforded by it to the Sudder Court, should it become law, would be comparatively small, but still it would be something, and as he had observed on a former occasion, whatever time was saved from the trial of cases to which his Bill related, would be so much time gained for the disposal of more important business. The attempts then made to obtain the appointment of additional Judges to the Sudder Court at Calcutta, or to relieve that Court from some of its least important work, having both failed, it became necessary to consider what steps should be taken to enable the Court, not only to reduce the heavy arrears now pending before it, but to keep pace with its work for the future. He was sure that all who heard him would agree that the existing state of things should not be permitted to continue. It was hardly necessary for him to say that it was a great hardship to the suitors at large in the Sudder Court that they could not expect a final decision in the cases in which they were concerned under two years at the earliest. This very serious delay in the disposal of appeals in the Sudder Court must be highly injurious to the general interests of justice, and he must add that it could not but reflect discredit upon the Government. After carefully considering the subject, and consulting those whose long experience in these matters entitled their opinions to great respect, the conclusion to which he (Mr. Harington) had come was that, in existing circumstances, the best remedy that could be adopted was to pass an Act which would enable the Sudder Courts to dispose of the appeals coming before them by the employment of a less amount of judicial agency than was required by the Code as it now stood, and the first Section of the Bill, which he was desirous of introducing, had been prepared with this view.

For many years, all appeals instituted in the Sudder Court were distributed amongst the Judges of the Court. It was the duty of each Judge, with the aid of his separate establishment, to prepare the appeals so allotted to him for decision, and as soon as they were ready for decision, the papers were read out before him, and after hearing the arguments of Counsel, he proceeded to record his judgment. If he saw no reason to differ from the decision of the Court below, and the case was not one of sufficient importance to render it proper that it should go before a second Judge, he made a final decree; but if he disagreed with the Lower Court on any point, or, although concurring with that Court, it appeared to him that the case should not be decided by a single voice, he ordered the papers to be laid before a second Judge. With exception to the preparation of the case, the same process had to be gone through before the second Judge which had already been gone through before the first Judge. If the second Judge concurred with the first Judge, the appeal was disposed of accordingly; but if he differed, the appeal was referred to a third Judge, before whom the papers had to be read over again, and the case to be re-argued. The consequence was that, when an appeal went before three Judges in succession, it not unfrequently happened that there was an interval of a year between the date on which the first Judge recorded his opinion and the final disposal of the case. The practice just described continued to be followed until the year 1843, when an Act was passed (Act II of 1843), which provided that, "when a single Judge of the Sudder Court, trying a case in appeal, regular or special, from any subordinate Court, shall be of opinion that the decision appealed from ought to be reversed or altered, he shall always call in two other Judges of the Court to sit with him, and that the appeal shall be then heard by the three Judges sitting together, and be decided by them without any additional voices. In such cases the decree or final order shall be signed by the three Judges, if they agree together; but if one of them dissent from the view taken by the majority, by the two Judges who agree together, and the signature of the third Judge shall not be considered requisite, but his opinion shall be recited in the decree or final order." This was no doubt a great improvement upon the former practice, but as when the Judge who first heard the appeal was obliged, by reason of his differing from the

Court below, to call in two other Judges to enable him to dispose of the case, much valuable time and labor were lost, the Court, with the sanction of Government, passed a rule, requiring that all regular appeals should be heard and determined at once by three Judges sitting together. He was unable to say what was the effect of this rule in the Sudder Court at Calcutta, but he found it stated by the late Lieutenant-Governor of Bengal, in his evidence given before the House of Commons, that it was very remarkable of how much greater weight the decisions of the Sudder Court had been since the new rule was adopted than it was previously. At the time the rule was introduced into the Sudder Court at Agra, he (Mr. Harington) had the honor of a seat on the bench of that Court, and he could say, of his own knowledge, that the introduction of the rule was immediately followed by a very large increase in the number of decisions, and that the rule gave great satisfaction. Such then having been the beneficial effects, in practice, of the rule alluded to, it was only natural that they should wish to retain it in the new Code of Civil Procedure; and, accordingly, the Clause which he had already read to the Council was added to Section 332 when the Bill was passing through a Committee of the whole Council; but as it was quite impossible for the Sudder Court at Calcutta, with its present number of Judges, to give three Judges for the disposal of every appeal that came before it, and as he was informed that the Sudder Courts at Madras and Agra had also applied for additional assistance, which there was little probability of their getting, some modification of the rule was unavoidable. It was accordingly proposed to subtitute the words "two or more" for "three or more" in the last two lines of the Section, and in order to provide for any difference of opinion that might arise, to add to the Section that when the Court consisted of two Judges only, if they differed in opinion upon the evidence, and one Judge concurred in opinion with the Lower Court as to the facts, the case should be determined accordingly; but if in a Court so constituted a difference of opinion arose upon a point of law, the Judges should state the point upon which they differed, and the case should be re-argued upon that question before one or more of the other Judges of the Court, and should be determined in accordance with the opinion of the majority of the Judges.

It certainly had seemed to him that, when a difference of opinion arose between two Judges sitting together to decide an appeal, whether upon a point of fact, or upon any other point, the case should go before a third Judge. But it was thought by many that this would not afford the degree of relief required. It was moreover argued that, when one of the Judges of the Sudder Court concurred with the Judge of the Court below, who had had the advantage of hearing the witnesses and of cross-examining them, there would be a strong presumption that the decision of that Court upon the evidence was correct, and that the concurrent opinions of the two Judges, constituting, as they would, a majority, ought to satisfy reasonable men. There was, no doubt, much force in this argument, and he was accordingly willing to yield his own opinion. When any difference of opinion arose upon a question of law or upon the construction of a document, a third Judge would be referred to. This seemed to be proper in order to keep the law settled, and that the decision might in all such cases be that of a majority of the Judges of the Sudder Court. He believed he was right in saying that the proposed provision was concurred in by some of the Sudder Judges in this country, and that the authorities at home approved of it.

With respect to this part of the Bill he would only further remark that it was not pretended that the best remedy had been proposed; all that could be said was that it was the best remedy which, under existing circumstances, could be devised with any chance of its being adopted. Nor was it intended that this should be a final settlement of the question. At no distant date the Council would probably be called upon to consider the subject of the amalgamation of the Supreme and Sudder Courts and of the constitution of new District Courts, and it was hoped that some scheme would then be proposed for the hearing of appeals, where an appeal was allowed, which would be free from the objections to which many might

fairly consider the present Bill to be open.

The next Section of the Code referred to in the new Bill was Section 215. Under that Section the Court was required, on receiving an application for the execution of a decree, to cause the same to be compared with the original decree contained in the record of the suit. But it had been brought to his notice that the whole or nearly the whole of the records in the North-Western Provinces had been destroyed during the late mutinies, and that, consequently, it would often be found impossible to comply with this requirement of the law. There would also be some difficulty in conforming to it, when the Court, which originally decided a suit, was called upon to execute a decree passed in appeal in the same case for which the Code made provision. It was proposed, therefore, to omit certain words of the Section, and to leave it to the Court to satisfy itself in each case that the application was right and contained the necessary particulars, either by comparing it with the original decree sought to be executed, if that was at hand, or in some other way.

Lastly, the Bill proposed an alteration in Section 385 of the Code. That Section set forth that "the Act should not take effect in any part of the territories not subject to the general Regulation of Bengal, Madras, and Bombay, until the same should be extended thereto by the Governor-General of India in Council, or by the Local Government, to which such territory was subordinate and notified in the Gazette." Honorable Members might have observed in a recent number of the Calcutta Gazette that the Lieutenant-Governor of Bengal had extended the Act to certain Non-Regulation Districts under his Government, but that in doing so His Honor had added a proviso that no sale of land should be made without the sanction of the Commissioner of the Province. The Code contained no such provision, and a question might arise as to the competency of the Lieutenant-Governor to pursue this course, and whether, if he extended the Code at all, he was not bound to extend the whole Code. But as it seemed very desirable that the power exercised by the Lieutenant-Governor of Bengal in this instance should exist somewhere, the Bill proposed to authorize the Government of a Non-Regulation Province to which the Act might be extended, with the previous sanction of the Governor-General of India in Council, to declare that the Act should take effect therein, subject to any restriction, limitation, or proviso which it might think proper.

These were the alterations which were proposed to be made in the original Code, and it was intended that the Sections, as altered, should stand as part of the Code.

The Bill was read a first time.

BILLS OF EXCHANGE.

MR. HARINGTON moved the first reading of a Bill for declaring the law in relation to Bills of Exchange and Promissory Notes becoming payable on days generally observed as Holidays. He said, England had lately witnessed the solemn but pleasing spectacle of an entire nation uniting to offer up, in public, praises and thanksgiving to Almighty God, on a day specially appointed for the purpose by Her Majesty the Queen, for the signal success which had attended the Military operations in this country during the fearful contest in which they had lately been engaged, for the restoration of peace and tranquillity to India, and for the many and great mercies which had been vouchsafed to them as a nation and as individuals, and which had brought them through a crisis unparalleled in the history of the world. He felt sure that all who heard him would agree in the necessity and propriety of this national and public thanksgiving; but, if necessary and proper in England, how much more necessary and proper must it be in this country, which had been the scene of the many victories gained by our noble army, under its gallant leaders, one of the most gallant, most distinguished, and most chivalrous of whom they had the honor of numbering amongst their Members, and which had also been the scene of those mercies and of that great deliverance, the recollection of which must ever fill their minds with astonishment and wonder, and call forth the liveliest feelings of gratitude to Him, by whose blessing alone on the means used that deliverance had been effected, and our rule in this country

re-established on a firm and, it might be hoped, a lasting basis. Accordingly, the example set them by Her Majesty's Government in England would have been promptly followed by Her Majesty's Government in this country, but at the time, although rebellion had nearly ceased in the greater part of the British Territories in India, it could not be said that it had been entirely put down, and so long as the official Gazettes continued to contain Despatches, which announced new contests with those still in arms against us, followed, as had invariably been the case, by fresh victories which, though small in comparison with the glorious triumphs of the past year, were nevertheless great and important in themselves and in their consequences, and most creditable to the troops by whom they were achieved, it was felt that the Government of India could not with propriety appoint a day for a public thanksgiving for the complete restoration of peace and tranquillity, and however anxious the Government may have been that the opportunity lately enjoyed by our countrymen at home of offering up public thanks to the Almighty for His great mercies during the last two years, it was considered better to pause for awhile. He was happy to say that no reason now existed for further delay. The good time, so eagerly looked for, had come. In the language of the Proclamation just issued by His Excellency the Viceroy and Governor-General of India, "War was at an end; Rebellion had been put down; the noise of Arms was no longer heard where the enemies of the State had persisted in their last struggle; the presence of large forces in the Field had ceased to be necessary; order was re-established; and peaceful pursuits had everywhere been resumed;" and, as stated in the Proclamation, His Excellency had it now in his power to perform the grateful duty of appointing a day for a solemn thanksgiving to Almighty God for His signal mercies and protection, while, in order that the day might be more marked, and that it might be a day of general rejoicing as well as of thanksgiving, a week day had been selected by His Excellency, and it was desired that it should be observed as a holiday throughout British India by all faithful subjects of the Queen.

Mr. Harington

It was not necessary for him to tell the Council that no special legislation was required for the purposes of the Proclamation, and it might, therefore, naturally be asked what had the remarks which he had just ventured to address to the Council to do with the subject of the Bill of which he had given notice? The answer to the question was that the Bill owed its origin to a day having been appointed for the public thanksgiving, in which they had all been invited to take part, which was neither a Sunday nor other close holiday, and on which, therefore, but for the Proclamation, mercantile and other transactions would have gone on as usual. The title of the Bill set forth that it was "to declare the law in relation to Bills of Exchange and Promissory Notes becoming payable on days generally observed as Holidays." In England a law of this kind had been in force for many years, which made all Bills of Exchange falling due on Fast or Thanksgiving days payable on the day next preceding. It also pointed out when, in the event of a Bill which might fall due on any Fast or Thanksgiving day being dishonored, notice of the dishonor should be given. This law did not extend to India, but as similar doubts to those which had led to the passing of the English Act had arisen here, and it was advisable to remove the same with a view to prevent disputes and future litigation, it was proposed to pass a law containing the like provisions, in so far as they might be applicable, for this country. Hence the present Bill, which would apply not only to the particular day the appointment of which for a day of public thanksgiving had given rise to it, but to all future time. The Bill was also intended to have a retrospective effect. He believed he was right in saying that the custom of the country was in accordance with the provisions of the Bill, but it was considered desirable to give the sanction of law to what was now only custom or usage. This, he was given to understand, was the opinion of the Chamber of Commerce, who were in favor of the Bill.

The Bill was read a first time.

APPEALS.

MR. PEACOCK moved that the Report of the Select Committee on the

Bill "to provide for the more speedy disposal of Appeals in cases appealable to the Sudder Court and of applications for Special Appeals" be adopted.

Agreed to.

PENAL CODE.

MR. LEGEYT moved that a communication received by him from the Bombay Government, regarding the extension of Corporal Punishment under Act I of 1858, so as to embrace assaults and all petty offences, be laid upon the table and referred to the Select Committee on "The Indian Penal Code."

Agreed to.

MR. LEGEYT moved that a communication received by him from the Bombay Government, relative to the transfer of an infant child by its mother to a Kalawunt or dancing girl, be laid upon the table and referred to the Select Committee on the same Bill.

Agreed to.

The Council adjourned.

Saturday, July 9, 1859.

PRESENT:

The Hon'ble the Chief Justice, *Vice-President*, in the Chair.

Hon. Lieut.-Genl. Sir James Outram,	H. Forbes, Esq.,
Hon. H. B. Harington,	Hon. Sir C. R. M. Jackson,
P. W. LeGeyt, Esq.,	and
	A. Sconce, Esq.

ACTS OF THE LEGISLATIVE COUNCIL.

THE CLERK reported to the Council that he had received from the Home Department a copy of a Despatch from the Secretary of State for India reviewing Acts XX to XLI of 1858.

MR. PEACOCK moved that the above communication be printed.

Agreed to.

AMALGAMATION OF SUPREME AND SUDDER COURTS.

THE CLERK also reported that he had received from the Home Department an Extract of a Despatch from the Secretary of State for India, relative to the amalgamation of the Supreme and Sudder Courts.

MR. HARINGTON moved that the above Extract be printed.

Agreed to.

MAGISTRATES.

MR. PEACOCK begged to move the first reading of a Bill "to amend the law relating to offences declared to be punishable on conviction before a Magistrate." He said, a case lately came before the Supreme Court for consideration, as to the effect of Section LII of the Post Office Act XVII of 1854. By that Section certain offences, which did not require to be now mentioned, were punishable, on conviction before a Magistrate, with imprisonment for two years, and also with fine. Several other Sections rendered offenders liable to imprisonment for two years and to fine on conviction before a Magistrate. Section LVIII enacted that—

"Any person, whether a European British subject or not, who shall be guilty of any offence for which, according to the provisions of this Act, he shall be liable to a fine only, shall be punishable for such offence by any Justice of the Peace for any of the Presidency Towns of Calcutta, Madras, and Bombay, Magistrate, Joint Magistrate, or person lawfully exercising the powers of Magistrate; and any person hereby made punishable by a Justice of the Peace shall be punishable upon summary conviction."

Then Section LXVI declared that—

"The word 'Magistrate' in this Act shall include Joint Magistrates and persons lawfully exercising the powers of Magistrates."

The Supreme Court, putting the best construction upon the wording of the Act, without reference to what had passed in this Council at the time of its passing, came to the conclusion that the word "Magistrate" in Section LII meant a Zillah Magistrate, and did not include Justice of the Peace. Therefore, if an offence under any of those Sections were committed by any person who could not be tried before a Zillah Magistrate, that person could not be committed at all.

When the Act was originally before the Council, the words "Justice of the Peace" stood in the Interpretation Clause; but they were afterwards struck out of that Section in Committee. The words "Justice of the Peace" were not originally in the Fine Clause (Section LVIII), but were introduced after the Act had been published. He was unfortunately absent from the Council on account of indisposition when the Bill was before the Committee, and he was therefore unable to say why they were struck out. Both the learned Judges, Chief Justice Peel and Mr. Justice Colvile, were present. He remembered that Mr. Mills and Mr. Eliott took a very active part in the discussion, and he recollected to have been told by Mr. Mills, subsequently to the passing of the Bill, that the words "Justice of the Peace" had been struck out from the Interpretation Clause; he was not sure that the reason was stated, but he had no doubt that the omission had been advisedly made.

Now it must be borne in mind that the judicial powers of a Zillah Magistrate and the judicial powers of a Justice of the Peace were very different. A Zillah Magistrate had in many cases larger powers of punishment than a Justice of the Peace, and his decision was subject to an appeal to the Court of Sessions. But there was no appeal from the conviction of a Justice of the Peace, and the writ of *Certiorari* did not enable the Court to go into any questions as to evidence or the amount of punishment. There was therefore a check on the Mofussil Magistrate which there was not on a Justice of the Peace. Section LII and the other Sections referred to created new offences, so that the new remedy provided by the Act would require to be followed. It appeared to him, therefore, upon a proper construction of the words of Section LII, that an offence under that Section, committed within the local limits of the jurisdiction of the Supreme Court, would not be punishable at all.

A similar Section was adopted both in the Railway and the Electric Telegraph Acts passed in the same year. All offences punishable with fine only were made punishable by a Justice of the Peace or Magistrate; and the Interpretation Clause merely declared that "the word 'Magistrate' shall include a Joint Magistrate and any person lawfully exercising the powers of a Magistrate." It was clear therefore that by the term "Magistrate" a Mofussil Magistrate only was meant, and that it was intended to render those offences punishable in the Mofussil by the Magistrate in the same manner as many other offences which Zillah Magistrates at present had power to punish to the extent of two years' imprisonment.

For these reasons it appeared to him that the Act required amendment. He did not wish by that Bill to increase the powers of Justices of the Peace or of Police Magistrates, but only to provide that offences under that Act, punishable upon conviction before a Magistrate, should not be committed with impunity within the local limits of the Supreme Court, or by a European British subject in the Mofussil. Generally speaking, he did not see that there would be any serious objection to allow Justices of the Peace or Magistrates of Police to punish certain offences committed within the limits of the Supreme Court with fine or imprisonment not exceeding six months. In fact, they had that power in many cases under the existing law. The whole subject would be fully provided for by the Code of Criminal Procedure now under consideration. What he proposed was to declare that, if any offence, which by any Act of the Governor General in Council heretofore passed was declared to be punishable upon conviction by a Magistrate, should be committed by a European British subject beyond the local limits of the jurisdiction of any of Her Majesty's Supreme Courts, the offender should be liable, upon conviction before any such Court, to the punishment to which by such Act the offender was declared to be liable upon conviction before a Magistrate. So that for all those offences punishable in the Mofussil with imprisonment for two years, if the same be committed within the jurisdiction of a Supreme Court, a European British subject would be liable to be similarly punished on conviction before the Supreme Court. According to the construction put upon the Acts, a European British subject would not be liable to

Mr. Peacock

be tried in the Mofussil by a Magistrate, and that he might therefore commit any offence under those Acts with impunity.

Then he proposed to provide that, if any offence, which by any Act of the Governor General in Council heretofore passed was declared to be punishable upon conviction by a Magistrate, should be committed by any person within the local limits of any Court of Judicature established by Royal Charter, the offender should be liable, upon conviction before such Court, to the punishment to which by such Act the offender was to be liable upon conviction before a Magistrate.

Another difficulty which arose was, whether, when the power of punishment was given to a Magistrate or Justice of the Peace, it was intended that a Justice of the Peace should have the same power as a Zillah Magistrate. To obviate this difficulty, he proposed to enact that, whenever in any Act heretofore passed by the Governor General in Council the word "Magistrate" was declared to include a Justice of the Peace, such Justice of the Peace should not, by virtue of such Act, be deemed to have jurisdiction in respect of any offence, unless the same should be committed within the local limits of one of the Courts of Judicature established by Royal Charter.

He was aware that even now the Act would not be quite perfect, inasmuch as there were many offences punishable with fine only, for which a European British subject could not be punished in the Mofussil by a Zillah Magistrate. He did not propose such an amendment of the law in this Bill. That was a matter which required to be fully considered. It would be impossible to send such cases to the Supreme Court for punishment, and, consequently, in such cases the offence under the present state of the law would go unpunished. At present he merely wished to correct the mistake which had been committed in the Post Office and other Acts in regard to several offences punishable with two years' imprisonment to render those offences punishable when committed by a European British subject in the Mofussil, or by any person within the local limits of the Supreme Court.

The Bill was read a first time.

ABKAREE REVENUE (BOMBAY).

MR. LEGEYT moved the second reading of the Bill "to amend the law for the realization of Revenue from Abkaree in the Island of Bombay." He said, he might mention that it was not his intention, as stated in the Orders of the Day, to move the suspension of the Standing Orders in order that the Bill might be passed through its subsequent stages. If the Bill should pass the second reading, he proposed to refer it to a Select Committee for the purpose of undergoing revision, previously to its coming before a Committee of the whole Council for consideration.

MR. SCONCE said, he did not propose to offer any opposition to what he understood to be the primary object of this Bill. But there were one or two points on which he should be glad to have some information from the Honorable Member for Bombay before the Council came to vote upon the question now put.

From the Preamble, as well as the 3rd Section of the Bill, it appeared to be the object of the proposed law to declare that "no spirituous liquor should be manufactured in any part of the Island of Bombay, except from the juice drawn from cocoanut, brab, or date trees, and in such manufacture no moura, dates, rice, or other materials whatsoever should be used," and he understood that the Bill had been prepared from the old law, which exclusively dealt with spirituous liquors derived from the juice of the cocoanut, brab, and date trees. But he did not see that any explanation had been given of the grounds of the change now proposed by the absolute prohibition of the manufacture of spirituous liquor from any substance but the three trees named in the Bill.

Now if, as every where, common spirituous liquors were, and might be, distilled from other materials than the juice of trees, he wished to know why in the Island of Bombay distilleries of spirits from rice, for instance, might not be allowed to be used.

Again, there appeared to be some inconsistency between the 3rd and 11th Sections of the Bill. By Section III, as he had just observed, the manufac-

ture of spirituous liquors, except from the juice of cocoanut, brab, or date trees, was interdicted, whereas by Section XI the distillation of spirits from other materials, under the license of the Collector, appeared to be contemplated. The object of this latter Section he supposed to be that the Collector might grant a license to "make or distil any spirits, arrack, or other spirituous liquor," and thus the Section seemed to open up the manufacture from materials which the earlier portion of the Bill disallowed.

The only other matter which occurred to him was with regard to the District of Mahim. It appeared that brab trees in that district were not subject to the Abkaree Regulations in force in the Island of Bombay. The remark of the Bombay Government, with reference to the original proposition of continuing the exception, was that "it should be considered whether there are valid grounds for continuing exceptional rates in the Mahim district." But it seemed to him clear that if that matter was to be considered at all, more especially if the Standing Orders were to be suspended, the Council should have some information as to the grounds of such an exception.

There were one or two other matters with respect to the details of the Bill to which he should not now allude.

MR. LEGEYT desired to say a few words in explanation, as far as he was able to reply to the questions proposed by the Honorable Member for Bengal.

The prohibition referred to by the Honorable Member, to the manufacture of spirituous liquors from any other trees or sources than those mentioned in the Bill, certainly appeared a harsh and stringent provision. But he (Mr. LeGeyt) might venture to state that, except those trees, the Island of Bombay produced no other articles from which the manufacture of spirits was made. The manufacture of spirits from other materials was carried on in the contiguous Islands of Salsette and of Caranja, and the Distilleries there were subject to the general Abkaree Law of Bombay. The Abkaree of the Island of Bombay had always been legislated for separately. The erection of a Distillery, in a small yet very populous place like Bombay, would be found an intolerable nuisance, which the public convenience or public health could not permit for a moment.

Besides there was no occasion for it, the Island of Caranja being only five miles from Bombay, and the Island of Salsette contiguous to it, quite near enough for all the purposes in question.

Then, with regard to the Honorable Member's remarks on Section XI, the object of that Section was to provide a penalty for the manufacture of spirits without license, and he was instructed that there was at present no law to punish persons using stills without license.

With regard to Mahim, that district was situate at the North end of Bombay, and for some reason or other it had not been usual to levy the same duty there as in other parts. A discretionary power, as to the amount of tax to be imposed generally, was now proposed to be left to the Government of Bombay, similar to that which had been given by the Bengal Abkaree Act of 1856 to the Revenue authorities in Bengal.

The Motion was carried, and the Bill read a second time.

CIVIL PROCEDURE.

MR. HARINGTON moved the second reading of the Bill "to amend Act VIII of 1859 (for simplifying the Procedure of the Courts of Civil Judicature not established by Royal Charter)."

The Motion was carried, and the Bill read a second time.

EMIGRATION TO MAURITIUS, &c.

MR. PEACOCK moved the second reading of the Bill "to amend the law relating to the Emigration of Native inhabitants of India to the Island of Mauritius and other places."

The Motion was carried, and the Bill read a second time.

EMIGRATION TO ST. VINCENT.

MR. PEACOCK moved the second reading of the Bill "relating to the

Emigration of Native laborers to the British Colony of St. Vincent."

The Motion was carried, and the Bill read a second time.

ABKAREE REVENUE (BOMBAY).

MR. LEGEYT moved that the Bill "to amend the law for the realization of Revenue from Abkaree in the Island of Bombay" be referred to a Select Committee consisting of Sir Charles Jackson, Mr. Sconce, and the Mover.

Agreed to.

MR. LEGEYT moved that the Standing Orders be suspended, in order that the Select Committee on the above Bill might be instructed to report thereon within eight days.

Agreed to.

CIVIL PROCEDURE.

MR. HARINGTON moved that the Bill "to amend Act VIII of 1859 (for simplifying the Procedure of the Courts of Civil Judicature not established by Royal Charter)" be referred to a Select Committee consisting of Mr. Peacock, Mr. Forbes, Mr. Sconce, and the Mover.

Agreed to.

POLICE (PRESIDENCY TOWNS AND STRAITS).

MR. FORBES moved that a communication received by him from the Madras Government be laid upon the table and referred to the Select Committee on the Bill "to amend Act XIII of 1856 (for regulating the Police of the Towns of Calcutta, Madras, and Bombay, and the several stations of the Settlement of Prince of Wales' Island, Singapore, and Malacca)."

Agreed to.

CRIMINAL APPEALS.

MR. SCONCE moved that certain papers relative to a proposed amendment of the Law of Criminal Appeals be printed.

Agreed to.

BILLS OF EXCHANGE.

MR. HARINGTON gave notice that he would, on Saturday the 16th Instant, move the second reading of the Bill "for declaring the law in relation to Bills of Exchange and Promissory Notes becoming payable on days generally observed as holidays."

EMIGRATION TO MAURITIUS, &c.

MR. PEACOCK moved that the Bill "to amend the law relating to the Emigration of Native Inhabitants of India to the Island of Mauritius and other places" be referred to a Select Committee consisting of Mr. LeGeyt, Mr. Forbes, Mr. Sconce, and the Mover.

Agreed to.

LITERARY, SCIENTIFIC, AND CHARITABLE SOCIETIES.

MR. LEGEYT moved that Mr. Sconce be added to the Select Committee on the Bill "for the Registration of Literary, Scientific, and Charitable Societies."

Agreed to.

VILLAGE WATCHMEN (BENGAL).

MR. LEGEYT moved that Mr. Sconce be added to the Select Committee on the Bill "to regulate the appointment, employment, and dismissal of Village Watchmen in the Territories under the Government of the Lieutenant-Governor of Bengal."

Agreed to.

EMIGRATION TO ST. VINCENT.

MR. PEACOCK moved that the Bill "relating to the Emigration of Native laborers to the British Colony of St. Vincent" be referred to a Select Committee consisting of Mr. LeGeyt, Mr. Forbes, Mr. Sconce, and the Mover.

Agreed to.

The Council adjourned.

Saturday, July 16, 1859.

PRESENT:

The Hon'ble Barnes Peacock, *Vice-President*, in the Chair.

Hon. Lieut.-Genl. Sir J. Outram,	Hon. Sir C. R. M. Jackson,
Hon. H. B. Harington,	and
P. W. LeGeyt, Esq.,	A. Sconce, Esq.
H. Forbes, Esq.,	

CRIMINAL PROCEDURE.

THE CLERK reported to the Council that he had received from the Home Department, for consideration in connection with the Code of Criminal Procedure, copies of papers regarding the system of appeal in Criminal cases.

MR. HARINGTON moved that the above papers be printed.

Agreed to.

ELECTRIC TELEGRAPHS.

THE CLERK also reported that he had received, from the Home Department, a copy of a communication from the Bombay Government, relative to a proposed amendment of Act XXXIV of 1854 (for regulating the establishment and management of Electric Telegraphs in India).

MR. LEGEYT moved that the above communication be printed.

Agreed to.

ABKAREE REVENUE (BOMBAY).

MR. LEGEYT presented the Report of the Select Committee on the Bill "to amend the law for the realization of Revenue from Abkaree in the Island of Bombay."

MUNICIPAL ASSESSMENT (BOMBAY).

MR. LEGEYT also presented the Report of the Select Committee on the Bill "to amend Act XXV of 1858 (for appointing Municipal Commissioners, and for raising a Fund for Municipal purposes in the Town of Bombay)."

BILLS OF EXCHANGE.

MR HARINGTON moved the second reading of the Bill "for declaring the law in relation to Bills of Exchange and Promissory Notes becoming payable on days generally observed as Holidays."

MR. PEACOCK said, it was not his intention to oppose this Bill at the present stage. But he was not quite sure as to the soundness of the principle of the Bill. He was particularly doubtful as to the last Clause, which declared that "the words 'Bill of Exchange,' as used in this Act, shall include Bank Post Bills and all Native Drafts or Hoondees requiring by law presentment and notice of dishonor." He did not know what Native Drafts or Hoondees required by law presentment or notice of dishonor. If there were any, he did not think it right that they should be governed by the English law applicable to Bills of Exchange and the like. For instance, Section IV provided that, if a Bill fell due on Christmas Day or on Good Friday, it should be payable on the day preceding. Now Mahomedans and Hindoos did not recognize Christmas Day or Good Friday, because they did not observe them as holidays; and it would be hard to compel them to do so.

Then there was another objection as to Bills and Promissory Notes becoming due on the day preceding those on which the Government Public Treasury would be closed. There were sometimes very long holidays occurring, and the Public Treasury might be closed for many consecutive days, in which case Merchants and others would be compelled to pay perhaps a fortnight before the Bill fell due; and, although the Treasury might be closed on those days for the convenience of the native clerks, Merchants and others might prefer to keep their Offices open, in which case he could not see any sufficient reason for compelling them to pay so much earlier than the time at which the Bill would be due in ordinary course. There would also be a difficulty as regards the Doorgah Poojah Holidays. There were one or two days which intervened between the Doorgah Poojah and the Luckee Poojah, which were not even native holidays; and if the Treasury, as he believed had generally been the case, were closed from the commencement of the Doorgah Poojah till the end of Luckee Poojah, Bills becoming due during that interval would become pay-

able on the day preceding that on which the Doorgah Poojah holidays commenced. He believed it was the practice among Merchants and Bankers to open their Offices at least on the intervening days, and he thought it would be rather hard to make it obligatory on persons to pay their drafts a fortnight before they fell due.

He threw out these suggestions for the consideration of the Select Committee to whom the Bill would, in due course, be referred, and reserved to himself the right of opposing the Bill, if necessary, at a future stage. He was disposed to think at present that it would be better to leave the matter to be settled by the custom and usage of Merchants.

MR. HARINGTON said, at the time he prepared this Bill doubts similar to those which had been expressed by the Honorable and learned Vice-President, as to whether it would be right to apply its provisions to Native Hoondees, had occurred to him also, but as he could discover no reason why such Hoondees should not be included, he thought it better to make the Bill general. Should the Council allow the Bill to be read a second time, its publication would doubtless be followed by representations from Native Bankers and others, which would assist the Council in determining whether the provisions of the Bill should be made applicable to all Bills of Exchange alike, whether English or Native, which required presentment and notice of dishonor, or whether their operation should be confined to Promissory Notes and Bills of Exchange, requiring to be governed by English law; and any alterations in the Bill which might be considered necessary might then be made. He (Mr. Harington) had made enquiries on the subject, and he found that the practice amongst Native Bankers was not at all uniform. For instance, he was told that some Native Bankers were in the habit of cashing Hoondees which fell due on a native holiday on the day preceding, if the payee happened to be a friend or a countryman; but that, if he was not either one or the other, they would not cash the Bill until the day after. It appeared to him that such a state of things was not desirable, and that it would be better to have a fixed law for all classes. He had therefore made the Bill of general application. It seemed to him that it was always better to draw a Bill as large as possible in the first instance, though its provisions might afterwards require to be considerably narrowed. This could always be done without any difficulty; whereas, if a Bill underwent much enlargement in Committee, it must either be republished, which caused delay, or it was passed in a form which might make its provisions applicable to many classes whose interests not being affected by the Bill at the time of its publication after the second reading, they had not considered it necessary to take any notice of it. This was obviously objectionable.

The Motion was carried, and the Bill read a second time.

SALT DUTY (MADRAS).

MR. FORBES moved the second reading of the Bill "to establish a Duty of Excise on Salt manufactured in the Presidency of Fort St. George."

The Motion was carried, and the Bill read a second time.

STAMPS.

MR. SCONCE said that, before making the Motion, of which he had given notice, for the second reading of the Bill "to consolidate and amend the law relating to Stamp duties," there were one or two points on which he desired to say a few words with regard to Schedule B, which contained the specification of duties chargeable on Law Papers. He alluded to the effect produced by recent legislation on the receipt of Revenue derived from Stamps.

It would be in the recollection of the Council that, by Act VIII of 1859, the practice formerly in force of requiring the presentation of every piece of evidence, and the nomination of every witness, to be effected by the use in each case of a separate Stamp, had been discontinued. He did not look back with regret to the change thus effected; he conceived that the Council was wisely reluctant to continue the system which the new law had superseded. But at present it was simply his purpose to show the result which

was likely to follow from this change of the law.

He had ascertained from the suits decided in the Courts of the Principal Sudder Ameen and the Sudder Ameen of the 24-Pergunnahs, for the two months of March and April last, that on an average the Stamp paper supplied in those suits for the purposes above adverted to, that is, to cover exhibits and support the nomination of witnesses, amounted in each case to eighteen Rupees. Now it appeared that in Bengal the number of suits exceeding the value of three hundred Rupees, to which the old law was applicable, amounted to about four thousand a year; and thus, as the loss of Stamp Revenue in each suit appeared to be on an average eighteen Rupees, the whole loss for the four thousand suits should amount to about seventy-two thousand Rupees per annum.

Then as to the operation of the Rent Act X of 1859, the loss which would arise to Government by the transfer of such suits from the Civil Courts to the Revenue Courts would be as follows. Taking the average number of these suits filed in Moonsiffs' Courts to be fifteen thousand a year, and the average Stamp Revenue on each suit to be four Rupees, the amount of Revenue given up would be about sixty thousand Rupees.

There would be a similar loss of Revenue on account of suits disposed of by the Principal Sudder Ameens to the extent of about twenty-four thousand Rupees.

On the whole, therefore, he estimated that the loss of Stamp Revenue to be anticipated from recent legislation, speaking in round numbers, would somewhat exceed a lakh and fifty thousand Rupees. Partly to meet that deficit, and also to increase the general Revenue, he had proposed to extend the liability to the payment of Stamps to certain suits which had hitherto been exempted, that is, to suits decided by Moonsiffs. As the Bill now stood, Stamps were proposed to be levied on all petitions, and on copies of decrees, in regular suits exceeding fifty Rupees.

There was one other matter which he felt it necessary to mention. Under Act VIII of 1859 the Courts had the discretionary power to receive deeds written on plain paper, but for which a stamp was requisite, after the lapse of any period from the date of execution; whereas the present Bill proposed to enact that no deed, which was required to be stamped, should, if unstamped, be admissible in evidence after three months from the date of execution. He had not adverted to the special provision relative to this matter as made in Act VIII of 1859, before he had submitted the present Bill for a first reading, and no doubt the point would in due time receive the attention of the Council.

These were the only points to which he thought it necessary to allude just now, and with these observations he begged to move the second reading of the Bill.

MR. LEGEYT said, it appeared to him that the Bill was no improvement upon the existing Stamp Law of Bombay. But he would reserve his objections till a future stage.

The Motion was carried, and the Bill read a second time.

MAGISTRATES.

MR. PEACOCK moved the second reading of the Bill "to amend the law relating to offences declared to be punishable on conviction before a Magistrate."

The Motion was carried, and the Bill read a second time.

OATHS AND AFFIRMATIONS.

MR. FORBES said, the Council would remember that, when he moved the second reading of the Bill "concerning Oaths and Affirmations," it was decided that, before the Council was pledged to the principle of the measure, the opinions of all classes throughout the Empire should be invited, and certain questions were circulated from the Council, with the view of eliciting what was the general feeling regarding the repeal of Act V of 1840, and the enactment of a law to require that all witnesses should be examined on whatever oath might be most binding on their consciences. The replies to these questions were as yet by no means complete, and in those that had been received, as might have been expected,

both sides of the question were supported.

He should have waited until the whole series of replies was complete, before proposing to the Council to adopt any final measure regarding this Bill; but that in the Despatch from the Secretary of State, which had lately been laid before the Council by the Government of India, although no decided opinion was expressed, there was a very clear intimation that the measure was not in accordance with the views entertained by the Government at Home, and there was a probability that, even if it became law in India, the Secretary of State would exercise regarding it his undoubted right of veto.

After giving the subject every consideration, it had appeared to him to be inexpedient that he should further occupy the time of this Council in the consideration of a measure which, after all, would not become the law of the land, and that it was his duty to ask leave to withdraw a Bill which, whatever might be his own conviction of its value, would not, as was now evident, ever come into practical operation.

He hoped that the Council would acquit him of having needlessly occupied their attention with the consideration of a measure which he had no reasonable hope of carrying. He was not without very able support when the Bill was introduced, and the names of some of the most distinguished men in India were to be found among those who had since declared in its favor. He had brought the measure forward from a conscientious belief that it was wanted, and he now asked leave to withdraw it, not because his own opinion had changed, but because he considered that it would not be paying the Council the respect which he always desired to show to it, if he were to continue to press on its attention a measure which there was no probability would ever be in actual operation.

Agreed to.

ABKAREE REVENUE (BOMBAY).

MR. LEGEYT moved that the Standing Orders be suspended, in order that the Bill "to amend the law for the realization of Revenue from Abkaree in the Island of Bombay" might be passed through its subsequent stages.

Agreed to.

MR. LEGEYT then moved that the Council resolve itself into a Committee on the above Bill; and that the Committee be instructed to consider the Bill in the amended form in which the Select Committee had recommended it to be passed.

Agreed to.

The Bill passed through Committee after a few verbal amendments, and, the Council having resumed its sitting, was reported.

MR. LEGEYT moved that the Bill be now read a third time and passed.

The Motion was carried, and the Bill read a third time.

MR. LEGEYT moved that Sir James Outram be requested to take the above Bill to the Governor-General for his assent.

Agreed to.

MAGISTRATES.

MR. PEACOCK moved that the Bill "to amend the law relating to offences declared to be punishable on conviction before a Magistrate" be referred to a Select Committee consisting of Mr. Harington, Mr. Sconce, and the Mover.

Agreed to.

BILLS OF EXCHANGE.

MR. HARINGTON moved that the Bill "for declaring the law in relation to Bills of Exchange and Promissory Notes becoming payable on days generally observed as Holidays" be referred to a Select Committee consisting of Mr. Peacock, Sir Charles Jackson, Mr. Sconce, and the Mover.

Agreed to.

SALT DUTY (MADRAS).

MR. FORBES moved that the Bill "to establish a duty of excise on Salt manufactured in the Presidency of Fort St. George" be referred to a Select Committee consisting of Mr. Harington, Mr. Sconce, and the Mover.

Agreed to.

MAGISTRATES.

MR. PEACOCK moved that the Standing Orders be suspended to enable the Select Committee on the Bill "to amend the law relating to offences declared to be punishable on conviction before a Magistrate" to report thereon on Saturday next.

MR. FORBES seconded the Motion, which was then agreed to.

STAMPS.

MR. SCONCE moved that the Bill "to consolidate and amend the law relating to Stamp Duties" be referred to a Select Committee consisting of Mr. Harington, Mr. LeGeyt, Mr. Forbes, and the Mover.

Agreed to.

The Council adjourned.

Saturday, July 23, 1859.

PRESENT :

The Hon'ble the Chief Justice, *Vice-President*, in the Chair.

Hon. Lieut.-Genl. Sir J. Outram,	H. Forbes, Esq.,
Hon. H. B. Harington,	Hon. Sir C. R. M. Jackson, and
P. W. LeGeyt, Esq.,	A. Sconce, Esq.

LEGISLATIVE COUNCIL.

The following Message from the Governor General in Council was read by the Vice-President.

MESSAGE No. 180.

The Governor General in Council has the honor to forward to the Legislative Council the accompanying copy of a Despatch in the Legislative Department from the Right Honorable the Secretary of State for India, No. 5, dated the 3rd Ultimo, and to request that the Council will be pleased to furnish, for the information of Her Majesty's Government, a report on the practical working of the Standing Rules and Orders of the Legislative Council.

By order of His Excellency the Governor General in Council,

W. GREY,

Secy. to the Govt. of India.

Fort William,
The 16th July 1859.

MR. HARINGTON moved that the above Message and Despatch be printed.

Agreed to.

ABKAREE REVENUE (BOMBAY).

THE VICE-PRESIDENT read a Message informing the Legislative Council that the Governor General had assented to the Bill "to amend the law for the realization of Revenue from Abkaree in the Island of Bombay."

ESTATE OF THE LATE NABOB OF THE CARNATIC.

THE CLERK presented to the Council a Petition of Narrain Doss Gopaul Doss of Madras, praying for the repeal of Act XVI of 1859 (to provide for the administration of the Estate and for the payment of the debts of the late Nabob of the Carnatic).

MR. FORBES moved that the Petition be printed.

Agreed to.

CIVIL PROCEDURE (SUPREME COURTS).

THE CLERK reported to the Council that he had received, from the Home Department, a copy of a Despatch from the Secretary of State for India, regarding the enactment of a Code of Civil Procedure for the Courts established by Royal Charter in India.

MR. HARINGTON moved that the Despatch be printed.

Agreed to.

EMIGRATION TO BRITISH GUIANA.

THE CLERK also reported that he had received, from the Home Department, copies of papers on the subject of Emigration on private account from Bombay to British Guiana.

MR. HARINGTON moved that the papers be referred to the Select Committee on the Bill "to amend the law relating to the Emigration of Native Inhabitants of India to the Island of Mauritius and other places."

Agreed to.

MAGISTRATES.

THE VICE-PRESIDENT presented the Report of the Select Committee

on the Bill "to amend the law relating to offences declared to be punishable on conviction before a Magistrate."

ACQUISITION OF LAND FOR PUBLIC PURPOSES.

MR. SCONCE moved the first reading of a Bill "to amend Act VI of 1857 (for the acquisition of land for public purposes)." He said, the Bill to which he now had the honor to invite the attention of the Council had originated at the instance of the Bengal Government, in consequence of the operations for taking land for the Eastern Bengal Railway having been found to be considerably retarded, particularly during the last working season. The evil, or rather the defect, which it was proposed to correct, might be thus shortly stated. It was said that, when the operations of the Railway Company for the taking of the land were finished, that is, when the ground was surveyed and planned and the line marked out, from the time when the proceedings of the Railway Officers for this purpose were closed, up to the time when under the law the land could be taken possession of and the Railway works commenced upon, a period of two or three months must elapse. This was considered by the Government of Bengal and the Railway authorities a sufficient ground for the interference of the Legislature.

There was no intention, he might say, in the Bill, as it now stood, to interfere with the principle of the existing law. It was prepared for the purpose of expediting the process by which the land was taken possession of, in order to carry on the works of the Railway, without prejudice, he believed, to the interests or claims of private individuals.

Under the present law the process followed for the taking of land was this. Under Section IV the Collector was required to cause the land to be marked out and measured, and a plan of the same to be made. Practically, however, the land was surveyed and marked out by the Railway Officers, and on a plan of each section (ordinarily two miles in length) being furnished to the Commissioner, that Officer would proceed to make the detailed measurement of the land required by Section IV Act VI of 1857. The Railway Authorities had wished that their own survey should be received by the Collector as the basis of his operations. But that survey was made geographically, and furnished no means for the ascertainment of the nature of the land and of the buildings and other property upon it. Therefore, the detailed measurement by the Commissioner was necessary for the distinct specification of the several interests vested in the land to be taken for the Railway. As he had said, the Collector, on being informed that the line had been surveyed and marked out, proceeded to measure. In proceeding to measure, the Collector was required under the general law to give general and special notices, calling upon the persons interested to appear on the expiration of fifteen days from the date of publication of notice, and set forth their interest in the land about to be taken. Thus, first, there was the Railway Officer's survey and marking out; then there was the Collector's detailed measurement, which was usually accomplished by the Ameens attached to the Commissioner's establishment; then there were the notices issued by the Commissioner; and, last of all, the Collector or Commissioner was required to review the measurement proceedings and to adjudicate claims.

The object of the present Bill accordingly was to dispense with a portion of the process now required. It was proposed that the Collector, as soon as he was informed that a line had been surveyed and marked out, should notify to the parties interested that he was about to measure the land, and intimate to claimants that, on the expiration of at least fifteen days from the date of publication of notice, they were required to appear before him and set forth their claims to compensation. A further period of ten days was allowed for the revision of the detailed measurement, after the expiration of which time the Bill proposed that immediate possession of the land might be taken.

In the first instance, then, between the present law and the proposed Bill there was this difference, that in the former the issue of notice followed, and in the latter it would precede, the measurement. But

it was important to observe that, in the whole course of the proceedings taken by the Commissioners, two steps of perfectly distinct characters had to be disposed of; first, the specification of the land, and, secondly, the determination of claims. As the practice now was, all parties seemed to accept the specification, that is, the detailed measurement, as furnishing as clear an exhibition of the condition of the land, as the land itself. It had been found, generally speaking, that in forty-nine cases out of fifty the measurement, as reported by the Surveying Officers, furnished a sufficient basis, without the necessity of inspecting the land, for the determination of the amount of compensation. On that principle, accepting the detailed measurement as a sufficient basis for the award to be made, it appeared to him (Mr. Sconce) that possession of land might be taken under this Bill without detriment to the interests of any other parties, whether occupants, tenants, or proprietors of the land, at the same time that it would secure to them the early payment of their dues, and remove the obstacles which retarded Railway operations under the practical working of the existing law.

A suggestion had been made in the papers which had been referred to him to revert to the old law of 1850, which enabled the Commissioner to take possession of land summarily before detailed measurement. But there was no intention in this Bill to adopt that suggestion. So far as it appeared to him (Mr. Sconce), the completion of the measurement was conclusive authority for the Commissioner taking possession of the land, and he (Mr. Sconce) had no hesitation to adopt the proposition which he had just expressed, that, on that Officer being first satisfied that the measurement was completed, and allowing a further period of ten days to pass after completion, he might be permitted to take possession of the land without detriment to the rights or interests of any private individuals.

As he had said, from two to three months now elapsed before the Railway Officers were enabled to go on with the Railway works after they were ready to go on, and considering the shortness of the working season in Bengal, it became a matter of urgent necessity to shorten the time which was unprofitably consumed under the provisions of Act VI of 1857. The main object of the Bill was in fact to save time by which no man gained. The rights of occupants or owners of the land did not seem to be in any way protected by the tardier process of the present law. Their rights were sufficiently protected by the specification of the property to be taken, as recorded by the measurement of the Railway Commissioner; and to give them full information of what was going forward, it was proposed that a notification should first be published of the intention to undertake the measurement of the marked out line.

Besides, in addition to the publicity which the survey and marking out by the Railway Officers gave as to their proceedings, a provision was inserted in this Bill, not contained in the Act now in force, namely, that by a notification, the attention of all parties interested should be called to the preliminary survey undertaken by Section XXXIV of that Act

He would also remark that the proposition now made in fact virtually corresponded with the declared principle in the present law. As he had said, the object of the proposed Bill was to take immediate possession of land on the measurement being finished. So under the present Act, if the Collector and a claimant of compensation did not agree as to amount, and the case was referred to arbitration, the Collector might at once take possession of the land; so that, although arbitration was still pending, and however long it might be pending, possession passed to the Government, and the arbitrators who had to make the award were governed by the measurement record. The same principle might safely be adopted in this Bill, and land be allowed to be taken upon the completion of the detailed measurement.

The Bill was read a first time.

MAGISTRATES.

THE VICE-PRESIDENT moved that the Standing Orders be suspended, in order that the Bill "to amend the law relating to offences declared to be punish-

able on conviction before a Magistrate" might be passed through its subsequent stages. He had mentioned, at the time when he introduced this Bill, that the object of it was not to increase the powers of Justices of the Peace or of Police Magistrates, but merely to provide that certain offences under the Post Office and other Acts, punishable upon conviction before a Magistrate, should not becommitted with impunity within the local limits of the Supreme Court, or by European British Subjects in the Mofussil.

As the Bill was not intended to alter the existing law, but only to correct defects in certain Acts, he thought that he was not asking too much of the Legislative Council in proposing that the Standing Orders should be suspended with a view to this Bill being passed through its subsequent stages.

MR. HARINGTON seconded the Motion, which was then carried.

THE VICE-PRESIDENT said, before moving that the Council should go into Committee upon the Bill, he would request the Clerk of the Council to read the Report of the Select Committee upon it.

The Report was read accordingly.

THE VICE-PRESIDENT then moved that the Council resolve itself into a Committee upon the Bill, and that the Committee be instructed to consider the Bill in the amended form in which the Select Committee had recommended it to be passed.

Agreed to.

The Bill passed through Committee without any amendment, and, the Council having resumed its sitting, was reported.

THE VICE-PRESIDENT moved that the Bill be read a third time and passed.

The Motion was carried and the Bill read a third time.

THE VICE-PRESIDENT moved that Mr. Harington be requested to take the Bill to the Governor General for his assent.

Agreed to.

LEGISLATIVE COUNCIL.

MR. HARINGTON moved that the Message from the Governor-General in Council, calling for a report on the practical working of the Standing Rules and Orders of the Legislative Council, be referred to a Select Committee consisting of Mr. LeGeyt, Mr. Forbes, Mr. Sconce, and the Mover, with an instruction to report thereon on an early day.

Agreed to.

NOTICES OF MOTIONS.

MR. HARINGTON gave notice that he would, on Saturday next, move for a Committee of the whole Council on the Bill "for simplifying the Procedure of the Courts of Criminal Judicature not established by Royal Charter," and (following the course adopted with respect to the Civil Procedure Bill) he proposed that the consideration of the Bill in Committee on that day should not extend beyond Section 108 Chapter X. In the event of any Honorable Member intending to move an amendment of any of the Sections within the limit mentioned, he ventured to hope that, as a matter of convenience to the Council, notice of the same would be given to the Clerk of the Council in time to admit of its being printed and considered before the next meeting of the Council.

MR. LEGEYT gave notice that he would, on the same day, move the first reading of the following Bills, namely:—

A Bill to extend to India the provisions of Sections LII to LV of the English Passengers Act 18 and 19 Vic. c. 119.

A Bill to extend to the Straits Settlement Act XXIII of 1840 (for executing within the local limits of the Jurisdiction of Her Majesty's Courts legal process issued by Authorities in the Mofussil); and

A Bill to amend Act XXXIV of 1854 (for regulating the establishment and management of Electric Telegraphs in India).

MR. HARINGTON gave notice that he would, on the same day, move the first reading of a Bill to amend Act XVII of 1854 (for the management of the Post Office, for the regulation of the duties of Postage, and for the punishment of offences against the Post Office).

The Council adjourned.

Saturday, July 30, 1859.

PRESENT:

The Hon'ble the Chief Justice, *Vice-President*, in the Chair.

Hon. Lieut.-Genl. Sir James Outram,	H. Forbes, Esq.,
Hon. H. B. Harington,	Hon. Sir C. R. M. Jackson,
P. W. LeGeyt, Esq.,	and
	A. Sconce, Esq.

MAGISTRATES.

THE VICE-PRESIDENT read a Message informing the Legislative Council that the Governor General had assented to the Bill "to amend the law relating to offences declared to be punishable on conviction before a Magistrate."

MARKETS.

THE CLERK presented a Petition from certain Native Inhabitants of Bengal against the Bill "for regulating the establishment of Markets."

MR. SCONCE moved that the petition be referred to the Select Committee on the Bill.

Agreed to.

JAMSETJEE JEJEEBHOY BARONETCY.

THE CLERK reported to the Council that he had received, from the Home Department, a copy of a Despatch from the Secretary of State for India returning the Jamsetjee Jejeebhoy Baronetcy Bill in order that it might be remodelled consequent on the death of Sir Jamsetjee Jejeebhoy.

OATHS AND AFFIRMATIONS.

THE CLERK also presented a communication from the Government of the North-Western Provinces regarding Oaths and Affirmations.

MR. HARINGTON moved that the communication be printed.

Agreed to.

PASSENGERS.

MR LEGEYT moved the first reading of a Bill "to amend the law relating to the carriage of Passengers by Sea." He said, the object of this Bill was to extend the provisions of a portion of the Act of Parliament of the 18 and 19 Vic. c. 119 to vessels sailing from Ports in British India. The provisions of that Act did not include vessels sailing from any Port in British India and carrying Native Emigrants as Passengers. A case had lately happened at St. Helena of a vessel which had run on shore, and was consequently unable to proceed on her voyage, and great difficulty might have been experienced by the authorities as to how the Emigrants were to be dealt with But the difficulty did not arise in consequence of the Master of that vessel having made arrangements at his own expense for at once forwarding the Emigrants to their destination by another vessel. Still it had been pointed out that Masters of vessels might not always be found to act in the same manner, and it had been thought expedient to take advantage of Section XCIX of the English Passengers Acts (18 and 19 Vic. c. 119), which authorized the Governor General of India in Council to enact by a local law that any part of the said Act should be made applicable to vessels sailing from Ports in British India and their passengers.

This Bill had accordingly been prepared to guard against inconvenience likely to arise from accidents which were incident to voyages by sea, by making Sections LII to LV of that Act so applicable.

Section I enumerated the voyages from certain Ports in India which were to be regulated by the Bill; Section II empowered Governors or Consuls to pay expenses of taking off passengers at sea; and Section III empowered them to send on passengers if the Masters failed to do so; while Section IV made the expenses incurred for the above purposes a Crown debt.

With these observations he begged to move the first reading of the Bill.

The Bill was read a first time.

EXECUTION OF MOFUSSIL PROCESS (STRAITS).

MR. LEGEYT moved the first reading of a Bill "to extend to the Straits Settlement Act XXIII of 1840 (for executing within the local limits of the jurisdiction of Her Majesty's Courts legal process issued by Authorities in the

Mofussil)." He said, the object of this Bill was to extend the execution of process issued from any of the Civil Courts in British India to the Straits Settlement.

The law under which Mofussil process was now executed within the Jurisdiction of the Supreme Courts was Act XXIII of 1840. But that Act made no mention of the Courts established by Royal Charter in the Straits, and its provisions only applied to the Presidency Towns of Calcutta, Madras, and Bombay. A case had arisen where inconvenience had been experienced from the impossibility of serving process issued by the authorities at Rangoon on parties in the Straits. Sometime ago a process had been issued at Rangoon against a party who was residing at Penang, but the learned Recorder of Penang found himself unable to execute the warrant, because he found that Penang was not within the limits of Her Majesty's Supreme Courts. There appeared to be no objection made in any quarters to the proposed extension, and a short Bill had therefore been prepared to declare that, in execution of the powers of Act XXIII of 1840, the said Act should be read as if the words "any Court of Judicature established by Royal Charter" were mentioned therein, instead of the words "Supreme Courts of Calcutta, Madras, and Bombay."

The Bill was read a first time.

ELECTRIC TELEGRAPHS.

MR. LEGEYT moved the first reading of a Bill "to amend Act XXXIV of 1854 (for regulating the establishment and management of Electric Telegraphs in India)." He said, the object of this Bill was to amend certain defects which had been found to exist in that Act. In dealing with this subject, he had found it more convenient to repeal Act XXXIV of 1854, and to re-enact its provisions with the required amendments by a new Bill. Several of these alterations were in the phraseology of the Act, the change of which was rendered desirable by the transfer of the Government of India to the Crown. New provisions had been introduced, as it had been thought expedient to specify the authorities under whose orders alone the servants of the Electric Telegraph Department might be authorized to do certain things connected with the Department.

The Bill authorized a penalty of imprisonment with or without hard labor for a term not exceeding three months in addition to the punishment provided for misconduct in Section XII of the Act. It made the offer of a bribe to any person in the employ of Government in the Electric Telegraph Department penal, with a penalty, on conviction, of imprisonment for a term not exceeding six months, or with fine, or both.

He had omitted Sections XVII, XVIII, and XIX of the Act. Their objects were provided for by existing laws and certain alterations in the language of the present Bill. The alterations which had been made were suggested principally by Sir William O'Shaughnessy, and the papers on the subject had already been printed and circulated to the Members.

With these remarks he begged leave to move the first reading of the Bill.

The Bill was read a first time.

POST OFFICE.

MR. HARINGTON said that, since he had given notice of his intention to move the first reading of a Bill to amend Act XVII of 1854 (commonly called the Post Office Act), he had been informed by the Director General of Post Offices in India that he had also some amendments of that Act to propose, and as it was very desirable that the Bill, which was about to be brought in, should embrace all necessary amendments of the existing law, as well those proposed by himself as those considered requisite and proper by the Director General of Post Offices, he would, with the permission of the Council, postpone his Motion until this-day fortnight. He thought it right, however, to mention at once that there was no intention on the part either of himself or of the Director General of Post Offices to propose any increase in the present rates of Inland Postage.

CRIMINAL PROCEDURE.

MR. HARINGTON moved that the Council resolve itself into a Committee of the whole Council on the Bill "for

simplifying the Procedure of the Courts of Criminal Judicature not established by Royal Charter;" and that the Committee be instructed to consider the Bill in the amended form in which the Select Committee had recommended it to be passed.

Agreed to.

Section 1 was passed after an amendment.

Section 2 was passed as it stood.

Section 3 provided as follows:—

"No person whatever shall, by reason of place of birth or by reason of descent, be exempt from the rules of Criminal Procedure. Provided that nothing in this Section shall be held to authorize the trial before any Criminal Court of any person who, in respect of the offence with which he is charged, is not subject to the jurisdiction of that Court."

SIR JAMES OUTRAM said, he had no doubt that the strict legal interpretation of this Section was quite consistent with the preceding Section. But to persons like himself, not learned in the law, there certainly appeared to be an inconsistency between the two Sections. The previous Section excepted some persons, while this Section excepted no one.

MR. HARINGTON said that this Section, as originally drawn by Her Majesty's Commissioners, did not contain any proviso, but merely declared the applicability of the Code of Procedure to all classes indiscriminately. The proviso was added by the Select Committee, and was considered necessary in consequence of the exception contained in the preceding Section. Under the law as it now stood, European British Subjects could not be tried for felony in the Mofussil, but must be committed for trial before the Supreme Court of Judicature within whose general jurisdiction the offence was committed. It would be the duty, however, of the local Magistrate to make the preliminary investigation which would be conducted by him under the rules contained in the Code of Procedure in the same manner as if the offence had been committed within his jurisdiction by a person not being a European British Subject, and therefore the Section declared the non-exemption of any person from the rules of Criminal Procedure contained in the Code, simply by reason of place of birth or by reason of descent. This was in no way inconsistent with the exception contained in the Section immediately preceding, but in order that there might be no doubt on the subject, the proviso was added, which declared that nothing in the Section should be held to authorize the trial of any person who, in respect of the offence with which he was charged, was not subject to the jurisdiction of the Court, even though it might be the duty of that Court to make the preliminary investigation.

SIR CHARLES JACKSON said, that the intention of this Section was not happily expressed. What was there to show that the words "be exempt from the rules of Criminal Procedure" were not general, but were merely intended to be confined to investigation preliminary to trial? It was true that the word "trial" appeared in the subsequent proviso, but that, he thought, only served to increase the difficulty.

THE VICE-PRESIDENT said that, reading this Section with the preceding one, it appeared to him that no one who was heretofore exempt from the jurisdiction of the Mofussil Courts would be liable under this Code to be tried by them. European British Subjects, as every body knew, were exempt from the jurisdiction of these Courts generally, but still they were subject to the Mofussil Courts in respect of offences made punishable by any local or special law. He would refer, for instance, to the Post Office Act, which had lately come under the consideration of the Council. Under that Act, a European British Subject was liable to be tried by the Mofussil Courts in respect of an offence punishable with fine only; so that a Mofussil Court, although it had no jurisdiction over European British Subjects under the general law, might take cognizance of an offence under the Post Office Act committed by a European British Subject, for which a fine alone was imposed. The meaning of these two Sections, therefore, taken together, appeared to him to be that European British Subjects were not generally subject to the jurisdiction of the Mofussil Courts; but when they were so subject under any special or local law, those Courts should proceed according to the rules of Procedure provided by this Code.

The Section was ultimately passed after two verbal amendments.

Section 4 provided as follows :—

"Every offence shall ordinarily be enquired into and determined and the offender prosecuted and punished in the district or jurisdiction in which the offence was committed."

THE VICE-PRESIDENT said, he had some little doubt as to this Section, with reference to the words "ordinarily be enquired." What was meant by the word "ordinarily"? Suppose a European British Subject committed an offence within the jurisdiction of a Mofussil Court, the Section as it now stood might be held to exclude that Court from taking cognizance of the offence.

After some discussion, certain amendments were carried, which made the Section stand thus :

"Except where otherwise expressly provided by this Act, every offence shall be enquired into and determined, and the offender prosecuted and punished in the District or Division in which the offence was committed. Provided that nothing in this Section shall exempt European British Subjects from being tried and convicted before the Supreme Courts of Judicature for offences committed beyond the local limits of such Courts."

Sections 5 and 6 were passed after verbal amendments.

Sections 7 to 11 were passed as they stood.

Section 12 was passed as it originally stood.

The further consideration of Section 13 was postponed, after two verbal amendments had been made therein.

The consideration of Sections 14 and 15 was postponed.

Section 16 provided as follows :—

"In all Criminal Courts complainants and witnesses shall be examined upon oath or affirmation, or otherwise, according to the provisions of the law for the time being in force in relation to the examination of complainants and witnesses."

THE VICE-PRESIDENT said that, as the Honorable Member for Madras had withdrawn his Bill "concerning oaths and affirmations," and had no intention of bringing in another measure having for its object the re-introduction of oaths in lieu of affirmations, he (Sir Barnes Peacock) did not see why the Council should delay any longer in coming to a decision in the matter. His own opinion, and, he believed, the opinion of other Honorable Members were in favor of the abolition of oaths altogether in judicial proceedings. The Select Committee on the Civil Procedure Code had proposed the insertion of a Section requiring witnesses to be examined without oath or affirmation, but with due warning by the Judge. When that Code came before a Committee of the whole Council, the question of re-introducing oaths was revived by the Honorable Member for Madras, and it was ultimately determined that the matter should be brought to a decision by a Bill which that Honorable Member undertook to introduce on the subject. Meanwhile the Code of Civil Procedure was passed, with the substitution, for the Clause referred to, of another similar to that now under consideration, requiring witnesses to be examined upon oath or affirmation, or otherwise, according to the law for the time being in force relating to the examination of witnesses. But as the Bill introduced by the Honorable Member for Madras had been withdrawn, and as the question had now again come up, he saw no reason why the Council should be called upon to affirm that complainants and witnesses should be examined upon oath or affirmation. He therefore moved the omission of the words "upon oath or affirmation, or otherwise."

After some conversation the Motion was carried, and the Section as amended then passed.

Section 17 was passed after amendments.

Sections 18 and 19 were passed as they stood.

Section 20 was passed after an amendment.

Sections 21 and 22 were passed as they stood.

Section 23 was passed after an amendment.

Section 24 was passed as it stood.

Sections 25, 26, and 27, were passed after amendments.

Sections 28 and 29 were passed as they stood.

The consideration of Sections 30 and 31 was postponed.

Sections 32 and 33 were passed as they stood.

Section 34 provided as follows:—

"A warrant directed to a superior Officer of Police, or to a Nazir, or other proper Officer of a Court, may be executed by any Officer subordinate to such superior Officer of Police or Officer of the Court respectively."

THE VICE-PRESIDENT said, it appeared to him that there should be something on the face of the warrant to show that the superior Officer of Police or proper Officer of the Court had deputed his subordinate to execute it. The Penal Code proposed to give the right of private defence to a person against an act done or attempted to be done by the direction of a public servant, unless the person knew or had reason to believe that the person doing the act was acting by such direction, or unless the person acting stated the authority under which he acted, or, if he had authority in writing, unless he produced such authority. He should move to add the words "whose name shall be endorsed upon the warrant by the Officer to whom the same is directed."

The Motion was carried, and the Section as amended then passed.

Sections 35 to 70 were passed as they stood.

Section 71 was passed after amendments.

Sections 72 to 81 were passed as they stood.

The consideration of Sections 82 to 84 was postponed.

Sections 85 and 86 were passed as they stood.

The consideration of Section 87 was postponed.

Sections 88 to 93 were passed as they stood.

Section 94 was passed after amendments.

Sections 95 to 97 were passed as they stood.

The consideration of Section 98 was postponed.

Sections 99 to 108 were passed as they stood.

The further consideration of the Bill was then postponed till Saturday next, and the Council resumed its sitting.

RAILWAY CONTRACTORS AND WORKMEN.

MR. HARINGTON moved that a communication received by him from the Government of the North-Western Provinces be laid upon the table and referred to the Select Committee on the Bill "to empower Magistrates to decide certain disputes between contractors and workmen engaged in Railway and other works."

Agreed to.

TRIALS BY SESSIONS JUDGES.

MR. HARINGTON moved that a communication received by him from the Government of the North-Western Provinces be laid upon the table and referred to the Select Committee on the Bill "to empower Sessions Judges to pass sentence in certain cases without reference to the Sudder Court."

Agreed to.

NOTICES OF MOTIONS.

MR. HARINGTON gave notice that he would, on Saturday next, move the first reading of a Bill to make perpetual Act XXVIII of 1857 (relating to the importation, manufacture, and sale of Arms and Ammunition, and for regulating the right to keep or use the same), and that the Standing Orders be suspended, in order that the Bill may be proceeded with.

Also the first reading of a Bill to continue Act XXXIII of 1857 (to make further provision relating to Foreigners).

MR. LEGEYT gave notice that he would, on the same day, move the first reading of a Bill for settling a sum of money and a Mansion-house and hereditaments called Mazagon Castle, in the Island of Bombay, late the property of Sir Jamsetjee Jejeebhoy, Baronet, so as to accompany and support the title and dignity of a Baronet conferred on him by Her present Majesty Queen Victoria, and for other purposes connected therewith.

The Council adjourned.

This leaf to be cancelled on the issue of Part VIII.

The Section was ultimately passed after two verbal amendments.

Section 4 provided as follows :—

"Every offence shall ordinarily be enquired into and determined and the offender prosecuted and punished in the district or jurisdiction in which the offence was committed."

THE VICE-PRESIDENT said, he had some little doubt as to this Section, with reference to the words "ordinarily be enquired." What was meant by the word "ordinary"? Suppose a European British Subject committed an offence within the jurisdiction of a Mofussil Court, the Section as it now stood might be held to exclude that Court from taking cognizance of the offence.

After some discussion, certain amendments were carried, which made the Section stand thus :

"Except where otherwise expressly provided by this Act, every offence shall be enquired into and determined, and the offender prosecuted and punished in the District or Division in which the offence was committed. Provided that nothing in this Section shall exempt European British Subjects from being tried and convicted before the Supreme Courts of Judicature for offences committed beyond the local limits of such Courts."

Sections 5 and 6 were passed after verbal amendments.

Sections 7 to 11 were passed as they stood.

Section 12 was passed as it originally stood.

The further consideration of Section 13 was postponed, after two verbal amendments had been made therein.

The consideration of Sections 14 and 15 was postponed.

Section 16 provided as follows :—

In all Criminal Courts complainants and witnesses shall be examined upon oath or affirmation, or otherwise, according to the provisions of the law for the time being in force in relation to the examination of complainants and witnesses."

THE VICE-PRESIDENT said that, as the Honorable Member for Madras had withdrawn his Bill "concerning oaths and affirmations," and had no intention of bringing in another measure having for its object the re-introduction of oaths in lieu of affirmations, he (Sir Barnes Peacock) did not see why the Council should delay any longer in coming to a decision in the matter. His own opinion, and, he believed, the opinion of other Honorable Members were in favor of the abolition of oaths altogether in judicial proceedings. The Select Committee on the Civil Procedure Code had proposed the insertion of a Section requiring witnesses to be examined without oath or affirmation, but with due warning by the Judge. When that Code came before a Committee of the whole Council, the question of re-introducing oaths was revived by the Honorable Member for Madras, and it was ultimately determined that the matter should be brought to a decision by a Bill which that Honorable Member undertook to introduce on the subject. Meanwhile the Code of Civil Procedure was passed, with the substitution, for the Clause referred to, of another similar to that now under consideration, requiring witnesses to be examined upon oath or affirmation, or otherwise, according to the law for the time being in force relating to the examination of witnesses. But as the Bill introduced by the Honorable Member for Madras had been withdrawn, and as the question had now again come up, he saw no reason why the Council should be called upon to affirm that complainants and witnesses should be examined upon oath or affirmation. He therefore moved the omission of the words upon "oath or affirmation, or otherwise."

After some conversation the Motion was carried, and the Section as amended then passed.

Section 17 was passed after amendments.

Sections 18 and 19 were passed as they stood.

Section 20 was passed after an amendment.

Sections 21 and 22 were passed as they stood

Section 23 was passed after an amendment.

Section 24 was passed as it stood.

Sections 25, 26, and 27, were passed after amendments.

Sections 28 and 29 were passed as they stood.

The consideration of Sections 30 and 31 was postponed.

Sections 32 and 33 were passed as they stood.

Section 34 provided as follows:—

"A warrant directed to a superior Officer of Police, or to a Nazir, or other proper Officer of a Court, may be executed by any Officer subordinate to such superior Officer of Police or Officer of the Court respectively."

THE VICE-PRESIDENT said, it appeared to him that there should be something on the face of the warrant to show that the superior Officer of Police or proper Officer of the Court had deputed his subordinate to execute it. The Penal Code proposed to give the right of private defence to a person against an act done or attempted to be done by the direction of a public servant, unless the person knew or had reason to believe that the person doing the act was acting by such direction, or unless the person acting stated the authority under which he acted, or, if he had authority in writing, unless he produced such authority. He should move to add the words "whose name shall be endorsed upon the warrant by the Officer to whom the same is directed."

The Motion was carried, and the Section as amended then passed.

Sections 35 to 70 were passed as they stood.

Section 71 was passed after amendments.

Sections 72 to 81 were passed as they stood.

The consideration of Sections 82 to 84 was postponed.

Sections 85 and 86 were passed as they stood.

The consideration of Section 87 was postponed.

Sections 88 to 93 were passed as they stood.

Section 94 was passed after amendments.

Sections 95 to 97 were passed as they stood.

The consideration of Section 98 was postponed.

Sections 99 to 108 were passed as they stood.

The further consideration of the Bill was then postponed till Saturday next, and the Council resumed its sitting.

RAILWAY CONTRACTORS AND WORKMEN.

MR. HARINGTON moved that a communication received by him from the Government of the North-Western Provinces be laid upon the table and referred to the Select Committee on the Bill "to empower Magistrates to decide certain disputes between contractors and workmen engaged in Railway and other works."

Agreed to.

TRIALS BY SESSIONS JUDGES.

MR. HARINGTON moved that a communication received by him from the Government of the North-Western Provinces be laid upon the table and referred to the Select Committee on the Bill "to empower Sessions Judges to pass sentence in certain cases without reference to the Sudder Court."

Agreed to.

NOTICES OF MOTIONS.

Mr. HARINGTON gave notice that he would, on Saturday next, move the first reading of a Bill to make perpetual Act XXVIII of 1857 (relating to the importation, manufacture, and sale of Arms and Ammunition, and for regulating the right to keep or use the same), and that the Standing Orders be suspended, in order that the Bill may be proceeded with.

Also, the first reading of a Bill to continue Act XXXIII of 1857 (to make further provision relating to Foreigners).

MR. LEGEYT gave notice that he would, on the same day, move the first reading of a Bill for settling a sum of money and a Mansion-house and hereditaments called Mazagon Castle, in the Island of Bombay, late the property of Sir Jamsetjee Jejeebhoy, Baronet, so as to accompany and support the title and dignity of a Baronet conferred on him by Her present Majesty Queen Victoria, and for other purposes connected therewith.

The Council adjourned.

Saturday, August 6, 1859.

PRESENT:

The Hon'ble the Chief Justice, *Vice-President*, in the Chair.

Hon. Lieut.-Genl. Sir James Outram,	H. Forbes, Esq.,
Hon. H. B. Harington,	Hon. Sir C. R. M. Jackson,
P. W. LeGeyt, Esq.,	and
	A. Sconce, Esq.

SMALL CAUSE COURTS.

THE CLERK reported to the Council that he had received a communi-

cation from the Madras Government, forwarding a return of Suits and Appeals instituted under that Presidency during the first four months of 1859.

MR. HARINGTON moved that the communication be printed.

Agreed to.

VILLAGE WATCHMEN.

THE CLERK also reported a communication from the Bengal Government, forwarding Reports on the litigation going on in the Districts of Hooghly, East and West Burdwan, and Beerbhoom, respecting the appointment and remuneration of Chowkeydars.

MR. SCONCE moved that the communication be referred to the Select Committee on the Bill "to regulate the appointment, employment, and dismissal of Village Watchmen in the Territories under the Government of the Lieutenant-Governor of Bengal."

Agreed to.

STANDING ORDERS.

MR. HARINGTON presented the Report of the Select Committee on the Message from the Governor-General in Council, calling for a report on the working of the Standing Rules and Orders of the Legislative Council.

MR. HARINGTON gave notice that he would, on Saturday next, move that the Report be adopted.

ARMS AND AMMUNITION.

MR. HARINGTON moved the first reading of a Bill "to make perpetual Act XXVIII of 1857 (relating to the importation, manufacture, and sale of Arms and Ammunition, and for regulating the right to keep or use the same)." He said, the Act which it was the object of this Bill to make perpetual, was proposed to the Council for adoption under date the 1st August 1857, and the Bill which was brought in on that date, having gone through the regular stages, received the assent of His Excellency the Right Honorable the Governor-General, and passed into law as Act No. XXVIII of 1857 on the 11th September following. By the 35th Section of the Act its operation was limited to two years, and as little more than a month of that period now remained, it had become necessary to consider whether the Act should be allowed to expire, or whether it should not be continued in force, and, in the latter case, whether any limit should again be assigned to its duration, or whether it should not rather be made one of the permanent laws of the country. It was scarcely necessary for him to remind Honorable Members that, at the time the Act was passed, the late mutiny in the Native Army of Bengal, and the rebellion which ensued thereon in some parts of the country, were at their height; but although those events no doubt hastened the introduction of the Act, and accelerated its passage through the Council, the expediency of disarming the population, with a view to the maintenance of the public peace, and to the prevention of crimes of the more violent class, particularly affrays, which in this country, from the number of persons who engaged in them, and from the fierceness of the combatants, so often assumed the character of pitched battles, had for many years previously been under the consideration of the Government, and had been strongly advocated by many old and experienced Officers. In the Punjab a general disarmament of the population had already been carried out with the happiest results. Indeed, the remarkable tranquillity which prevailed in that Territory during the eventful years of 1857 and 1858, when the greater portion of the North-Western Provinces of the Bengal Presidency was filled with violence, and outrages of every kind were being perpetrated therein with impunity, had been attributed in a great degree to the adoption of what he must consider this wise, prudent, and politic measure shortly after our acquisition of the Territory. In introducing Act XXVIII of 1857, the Honorable Mover of the Bill said—

"The Government of India had for some time past had under its consideration the state of the law relating to the manufacture and possession of arms and ammunition throughout India. The law as it stood at present was so far defective that, though it would admit of the seizure of arms, it gave no power to ascertain by which portions of the community arms were possessed, or to regulate the possession of arms, or to prevent their sale and manufacture. The object of

this Bill was to provide, as far as was possible, for all these purposes, by putting it in the power of the Government to regulate the importation, manufacture, and sale of arms and ammunition, and to know where they were kept, and the reasons and objects of their possession."

From these remarks it would be seen that, unlike some of the other special Acts which were passed in 1857, the Act in question had really not grown out of the events of that year, though its passing had been co-incident with them, and though equally with those Acts provision had been made for its remaining in force for a time only. It was no doubt quite right and proper that some of the special Acts referred to, should be temporary Acts only, and that they should not survive the necessity which had called them into existence; but the character of Act XXVIII of 1857 was very different, and there appeared to him (Mr Harington) to be obvious and cogent reasons why that Act should remain in the Statute Book. One of the strongest arguments in favor of the continuance of the Act was to be found in the marked benefits which had followed the introduction of a similar measure into the Punjab, not for a time only but permanently, and he had no doubt that the law, if continued in other parts of India, would tend greatly to the diminution of crime, particularly of crimes attended with violence, and that it would prove very beneficial to the people at large. He would only add as a further reason for continuing the Act in force, certainly for some time longer, that, although in those places to which its provisions had been extended an immense number of arms had been surrendered, the work had not as yet been nearly completed. The operation of disarming was still going on with great success. In other places again, from political or other reasons, it had not yet been commenced. If, therefore, the Act should be allowed to expire at the date fixed for its termination, the Government would not have it in its power to do any thing in the way of disarming the people in the places last referred to, while, in those places in which the Act was now in force, the local Officers would find themselves compelled suddenly to bring their labors to a close. This he thought would be highly objectionable and inexpedient, and in its consequences he feared it might prove very calamitous. For these reasons he hoped that the Council would give their consent to the Motion which he was about to make, and that they would further allow the Bill to pass at once through its remaining stages.

With regard to the provisions of Act XXVIII of 1857, he deemed it sufficient to remark that no legislative measure had probably ever been more carefully considered before it became law On referring to the Debates of the time, he found that the Bill had been re-committed no less than twice previously to the third reading, and every Section appeared to have been fully discussed and weighed before it was allowed to stand as part of the Act. So far as he was aware the Act had worked well, and no modification of any part of it had been proposed or seemed necessary With these remarks he begged to move that the Bill be now read a first time.

The Bill was read a first time.

FOREIGNERS.

MR. HARINGTON moved the first reading of a Bill "to continue in force for a further period of two years Act XXXIII of 1857 (to make further provision relating to Foreigners)." He said, the reasons which led to the introduction of the Act, to which this Bill related, would be found fully reported in the Volume of the Proceedings of the Council for November 1857, and it was unnecessary for him to occupy the time of the Council with a repetition of them. Happily the circumstances of the country were very different from what they were when the Act was passed, and there might not be so great a necessity for the Act now as there was then, but still it was considered that the time had not yet arrived when the provisions of the Act could be safely and properly dispensed with, and he trusted therefore that no objection would be made to the continuance of the Act in operation for the further comparatively short period of two years.

He did not know that he was required to say anything more on the subject, and he would therefore move the first reading of the Bill.

The Bill was read a first time.

JAMSETJEE JEJEEBHOY ESTATE.

MR. LEGEYT moved the first reading of a Bill "for settling Promissory Notes of the Government of India producing an annual income of Rs. 100,000, and a Mansion-house and Hereditaments called Mazagon Castle in the island of Bombay, late the property of Sir Jamsetjee Jejeebhoy, Baronet, deceased, so as to accompany and support the title and dignity of a Baronet lately conferred on him and the heirs male of his body, by Her present Majesty Queen Victoria, and for other purposes connected therewith." He said that it would be in the recollection of the Council that a Bill, very nearly to the same effect as that which he was now bringing forward, passed through the Council last year, and was sent to England for the sanction of the Crown. A communication, however, was reported to the Council, on Saturday last, from the Home Department, forwarding a Despatch from the Secretary of State for India, returning the Bill for the purpose of being remodelled, in consequence of the death of Sir Jamsetjee Jejeebhoy, which event took place in April last, and the Baronetcy descended to his son Sir Cursetjee Jamsetjee. Shortly after the death of Sir Jamsetjee, the Council had determined to abandon the old Bill, and had made a reference to the Government of Bombay, and through that Government to the present Baronet, requesting that the necessary steps might be taken for preparing a Bill to give effect to his father's wishes. Accordingly a Bill, suitable to the altered circumstances of the case, had been prepared and transmitted to him (Mr. LeGeyt); and this Bill, which seemed to him to supply all that was necessary, he now begged permission to read a first time.

The Bill would be printed and circulated, and he proposed, on Saturday next, to move the second reading, which, if agreed to, would be followed by a Motion to suspend the Standing Orders, so as to enable him to pass the Bill through its remaining stages, and ensure its transmission to England for the sanction of the Crown, which, owing to the Incorporation Section, was still necessary, by the Steamer which would leave Calcutta on the 23rd Instant.

The Bill was read a first time.

SALT DUTY (BOMBAY).

MR. LEGEYT moved the first reading of a Bill "to amend Act I of 1852 (for the consolidation and amendment of the Laws relating to the Customs under the Presidency of Bombay)." He said, the object of this Bill was to raise the Customs Duty paid on Salt imported into that Island, from twelve annas to one Rupee per maund. The present scale of Duty was fixed by Act I of 1852 Schedule A, and assimilated with the Excise Duty paid on Salt manufactured within the Presidency of Bombay, which was levied under Act XXVII of 1837 and Act I of 1838. It had recently been determined by the Home Government that the present Excise Duty on Salt in Bombay should be raised from twelve annas to one Rupee per maund of 82lbs. It therefore became important that imported Salt, which did not pay Excise Duty in India, should be subjected to a Customs tax at an equal rate to the Excise charge; and this was provided by the Bill which he now had the honor to introduce to the Council. He might mention that the additional Duty was expected to raise the revenue by seven lakhs of Rupees per annum, namely, from twenty-one to about twenty-eight lakhs. The present Salt Duty was imposed in lieu of Transit Duties, Town Duties, and Mohturfa taxes, amounting to about twenty-seven and a half lakhs, which had been abolished; and the Revenue realized by the Salt tax had not yet amounted to twenty and a half lakhs, so that the proposed measure would not place a greater burden than that which had been formerly imposed. The Bombay Government were of opinion that the community could very well bear the additional impost, and that it would cause no diminution in the actual consumption.

The Bill was read a first time.

WATER-SUPPLY (KURRACHEE).

MR. LEGEYT moved the first reading of a Bill "to provide funds for better supplying with water the Town and Suburbs of Kurrachee." He said, this Bill was intended to provide funds for the construction of certain waterworks by which it was proposed to supply

the cantonment, town, and port of Kurrachee with good and wholesome water. It was mentioned by the Commissioner in Scinde, as would be seen from the papers which would be printed and annexed to the Bill, that there was at present a great deficiency of this most necessary article, and what was procurable was exceedingly inferior in quality, and indeed deleterious to health. This had for some time past been a crying evil, and several projects had been formed to remedy it, but which had from some cause or other come to nothing. Ultimately Sir Bartle Frere referred the whole matter to Captain De Lisle, and requested him to propose a plan for supplying Kurrachee with drinking water by pipes from the bed of the Mulleer River into reservoirs in the cantonment, town, and port. The plan proposed by Captain De Lisle, which would be printed and circulated for the information of the Council, had been approved by the local authorities in Scinde and the Bombay Government. The Commissioner in Scinde had proposed two modes by which funds might be raised for carrying it into effect. The first was that the Government should (as in the case of the Vehar Waterworks) advance the funds for the purpose to be repaid by the sale of water and a rate on property. The other was that the Municipality of Kurrachee should be empowered to borrow a sufficient sum for the completion of the work, and to impose special rates on real property which would provide for the re-payment of the debt, and also sell, in certain cases, water. The Bombay Government had, in reference to the present state of the public finances, proposed this latter course for raising the necessary funds.

He might mention that the Municipality of Kurrachee was constituted under Act XXVI of 1850, and that it consisted of the Collector as Chairman and a certain number of Inhabitants as Municipal Commissioners.

The sum actually required was stated to be considerably less than ten lakhs of Rupees, but Sir Bartle Frere had recommended that the Municipal Commissioners should be authorized, subject to the sanction of the Governor of Bombay in Council, to borrow a sum of not less than ten lakhs, bearing interest at the rate of nine per cent. per annum, and that this sum should be re-paid by a tax on all houses and lands in Kurrachee, the cantonment, Ghizree, Clifton, and Keamaree—these were suburbs of Kurrachee. He proposed a tax of two per cent. on the value of all houses and lands. This tax it was calculated would realize about one lakh and twenty-five thousand Rupees per annum, and it was proposed that it should continue to be imposed till the capital borrowed was paid, and that it should be then reduced to a sum equal to keeping the works in repair and good order.

The Bill also provided for the assessment and collection of the tax, and for its recovery from those liable to pay.

He had proposed a Bill in a form very similar to that suggested by Sir Bartle Frere. It would be for consideration whether the mode proposed by that gentleman should be adopted in preference to that which had already been assented to by the Council in other places. This would doubtless be discussed when the Bill would come on for second reading, or afterwards in Committee of the whole Council, if the Council should allow the Bill to be read a second time. Kurrachee was a rising town, and a place of that sort to be stinted in water was a serious evil requiring immediate correction.

With these remarks he begged to move the first reading of this Bill.

The Bill was read a first time.

PASSENGERS.

MR. LEGEYT moved the second reading of the Bill "to amend the law relating to the carriage of Passengers by Sea."

The Motion was carried, and the Bill read a second time.

EXECUTION OF MOFUSSIL PROCESS (STRAITS).

MR LEGEYT moved the second reading of the Bill "to extend to the Straits Settlement Act XXIII of 1840 (for executing within the local limits of the jurisdiction of Her Majesty's Courts legal process issued by Authorities in the Mofussil)."

The Motion was carried, and the Bill read a second time.

ELECTRIC TELEGRAPHS.

MR. LEGEYT moved the second reading of the Bill "for regulating the establishment and management of Electric Telegraphs in India."

The Motion was carried, and the Bill read a second time.

ARMS AND AMMUNITION.

MR. HARINGTON, in pursuance of notice, moved the suspension of the Standing Orders, in order that the Bill "to make perpetual Act XXVIII of 1857 (relating to the importation, manufacture, and sale of Arms and Ammunition, and for regulating the right to keep or use the same)" might be proceeded with. As he had already mentioned, the Act would expire on the 11th September next, and it was very necessary that this Bill should be passed without delay.

MR. FORBES seconded the motion.

MR. SCONCE said, he had no intention absolutely to oppose the Motion for the suspension of the Standing Orders, so that the Bill should not come into operation on the expiration of the present Act. But it seemed to him that the authority exercised by the Council of suspending the Standing Orders was being too often exercised, and that, as in the case of the Bombay Abkaree Act lately passed and the present Bill, the earlier introduction of the measures would have rendered it unnecessary to suspend the Standing Orders. In this case it seemed to him advisable not to carry out the measure without giving the Council an opportunity of deliberating upon it. Probably, therefore, instead of suspending the Standing Orders in order to carry the Bill through the Council to-day, he should be glad to know if the Honorable Member would object to the Bill being postponed for a week or fortnight.

MR. HARINGTON said, he would not object to postpone the passing of the Bill through its remaining stages to-day, provided it was allowed to proceed in sufficient time to admit of its becoming law before the Act to which it related expired. He wished, however, to observe that there was this difference between the present Bill and other recent Bills in respect of which the Standing Orders had been suspended, that he was proposing nothing new, but merely a law to continue in force an existing Act which had been found to work remarkably well, and the provisions of which, before it became law, had been most carefully considered. Probably the Honorable Member for Bengal would have no objection to allow the Bill to be read a second time to-day, and to its being referred to a Select Committee, with instructions to present their report within a week.

MR. SCONCE assented.

Sir CHARLES JACKSON wished to know the principle of the Bill, and whether it applied to Europeans as well as to Natives.

MR. HARINGTON said that, if the Honorable and learned Judge would refer to the Debates of the Council under date the 5th September 1857, he would find the following remarks by the Honorable and learned Chief Justice of the day :—

> "He entirely acquitted many of the critics of this Bill of having read it. For instance, he had seen a complaint that Europeans were to be compelled by it to take out a license to possess arms; whereas the Council well knew that the provisions to that effect had been struck out of the Bill some weeks ago."

The Act did not apply to Europeans, and it was not the intention of the present Bill to extend the scope or application of the Act.

The VICE-PRESIDENT said, with reference to the Honorable and learned Judge's enquiry, he thought that the Act did apply to Europeans. Section IV gave Magistrates the power of seizing Arms or Ammunition in the possession of *any* person in whose possession such Arms or Ammunition could not, in the judgment of the Government or of the Magistrate, be left without danger to the public peace; and Section VI empowered the Government to exempt any persons whom they thought fit from certain provisions of the Act. Unless, therefore, Europeans were so exempted, they would be subject to the provisions of the Act.

With reference to the general question now before the Council, it appeared to him that the Standing Orders should not be suspended in the manner proposed by the Honorable Mover. He thought that a preferable course even

to that suggested by the Honorable Member for Bengal would be that which was adopted by the Council when it was thought advisable to continue to the family of the late Nabob of the Carnatic the exemption which they enjoyed from the jurisdiction of the Civil and Criminal Courts. Upon that occasion a Bill for the purpose was introduced, and after it had been read a second time it was referred in due course to a Select Committee and allowed to be published so as to afford the creditors an opportunity of pointing out any objections which they might have to offer against the measure. In the meantime a temporary Act was passed continuing the exemption during the progress of the other Bill through the Council.

In like manner, as Act XXVIII of 1857 would expire in September, there would be no objection to suspending the Standing Orders with a view to passing an Act for extending that Act for three or four months, and the present Bill could then be proceeded with in the regular course, so as to give the public an opportunity of making known their opinions as to whether the Act should be made perpetual or not.

MR. HARINGTON said, after what had passed, he willingly acceded to the suggestion from the Chair, and if the Motion for the second reading of the Bill should be carried, he would move for a Committee of the whole Council with a view to his proposing the necessary amendments. At an early Meeting of the Council he would introduce a Bill to make Act XXVIII of 1857 perpetual, which, if allowed to be read a second time, would be published in the regular course, and an opportunity would thus be afforded to the public of urging any objections that they might think proper to it.

THE VICE-PRESIDENT said, no Member who should vote in favor of the extension of the Act for a few months would be committed to the principle of the Bill for making the Act perpetual.

SIR CHARLES JACKSON said, upon that understanding he would make no objection.

The Motion was carried.

MR. HARINGTON moved the second reading of the Bill.

The Vice-President

The Motion was carried, and the Bill read a second time.

MR. HARINGTON moved that the Council resolve itself into a Committee on the Bill.

Agreed to.

Section I being proposed—

MR. HARINGTON moved the omission of this Section and the substitution of the following :—

"Act XXVIII of 1857 shall continue in force until the end of the year 1859."

Corresponding amendments were made in the Preamble and Title, and, the Council having resumed its sitting, the Bill was reported.

MR. HARINGTON moved that the Bill be read a third time and passed.

The Motion was carried, and the Bill read a third time.

MR. HARINGTON moved that Sir James Outram be requested to take the Bill to the Governor-General for his assent.

Agreed to.

CRIMINAL PROCEDURE.

On the Order of the Day being read for the adjourned Committee of the whole Council on the Bill "for simplifying the Procedure of the Courts of Criminal Judicature not established by Royal Charter," the Council resolved itself into a Committee for the further consideration of the Bill.

The postponed Section 82 provided as follows :—

"The examination of witnesses by the Police shall be taken on the spot where the enquiry is held, in the presence of the Head Officer of a Police Station, or, in the event of his absence, in the presence of any Officer above the rank of a peon or burkundaz, and the substance of any material information obtained from them shall be reduced to writing, not in the form of question and answer, but in that of a brief narrative, which shall be transmitted to the Magistrate, as hereinafter provided, under the signature of the Police Officer by whom the enquiry shall have been made."

MR. SCONCE said that this Section, as it now stood, proposed that the examination of witnesses by the Police should be taken on the spot. The question was thus raised generally as

to whether Police Officers should so far exercise judicial powers as to form a record of their investigations, without entering upon the broader question as to whether persons exercising primarily judicial powers should also exercise the powers of Police Officers. A Magistrate might be vested with the powers of controlling the subordinate Police, but the question arose whether Officers having the power of Detective Police should also exercise judicial functions. He thought it necessary that a distinct opinion should now be formed upon this question, and he could not help feeling, from the grounds suggested for the introduction of the Madras Police Bill now before the Council, which seemed to recognize a distinction between the system to be pursued in Bengal and the system to be pursued in Madras, that the full and fair consideration of the two systems could not be evaded. It was not because Police functions were under all circumstances incompatible with judicial functions that he proposed the amendment in this Section which he was now about to move, and he was free to confess that, in this respect, some considerable advantage did result from an early record being made of available information. Nevertheless, the first question which he conceived should now be disposed of, was whether men with the qualifications and character of ordinary Police Officers were competent to exercise the duty of examining and recording the examination of witnesses. So far as Bengal was concerned, this was a point on which he need hardly offer detailed proof of the operation of the present system. He expressed, he believed, the general conviction, that the records which the Police made up created the utmost distrust in the minds of our Judicial Officers. There might be occasions when the records were found useful. Nevertheless, there was a general impression of the unfitness and corruption of the Police, and unhappily in his own experience he had known districts in which it often seemed to him there could be no question of giving the Police more or less power, but rather of the quick and entire dispersion of the whole body. There might be not a few Police Officers, whose uprightness, moderation, and high feeling, deserved fully to be commended. And as with men, so with districts. There might be good districts, as well as bad districts; but they could not deal with exceptions. He thought, therefore, that if a remedy were proposed with a view to restore confidence in Criminal investigations, it demanded their best attention.

He might ask the Council to refer to the clearly recorded opinion of the learned Law Commissioners in England upon the question. He would state shortly the conclusions on the subject to which they came. It was observed that—

"The evidence taken by the Parliamentary Commissioners on Indian Affairs in the Sessions of 1852 and 1853, and other papers which have been brought to our notice, abundantly show that the powers of the Police are often abused for purposes of extortion and oppression."

Again, it was said that, in spite of provisions in the law to prevent any species of compulsion or maltreatment, confessions were frequently extorted or fabricated, and it was added:—

"We are persuaded that any provision to correct the exercise of this power by the Police (that is, the power of taking the answers or confessions of persons under arrest) will be futile; and we accordingly propose to remedy the evil, as far as possible, by the adoption of a rule prohibiting any examination whatever of an accused party by the Police, the result of which is to constitute a written document."

Such were the opinions expressed by the Law Commissioners in England. To show that similar opinions of the present state of the Police were still entertained here, he might mention that, in the course of last year, a correspondence passed between the Government of Bengal and the Commissioners of Police. In the course of that correspondence, the Commissioner of Burdwan remarked as follows:—

"He considers the Darogahs are very inferior in spite of increased salaries. The Darogahs of former days might have been equally corrupt, but under an active Magistrate they were more laborious and painstaking."

That report was written, he believed, by Mr. Elliott, than whom probably none had larger experience.

The Commissioner of Bhaugulpore said—

"The institution of grades and other improvements are said to have raised the Darogah class; this may be the case in the districts near Calcutta; but in the remoter districts to which the Commissioner's experience refers, he sees no change."

And to a similar effect was the opinion given by the Commissioner of Chittagong.

He (Mr. Sconce) might also adduce as an instance a case reported in the Volume of Reports of the Sudder Nizamut Adawlut for the first quarter of the present year, of a murder committed in the 24-Pergunnahs, within the suburbs of Calcutta. For many days the Darogah, who was deputed to enquire into the matter, had failed to detect the murderers. The Magistrate, dissatisfied with his proceedings, sent another Darogh to co-operate with the first, and the very next day two persons were sent up confessing to the crime. These confessions might, or might not, be true, but the consequence was that, when the case came on for trial, the proceedings broke down, and the utmost suspicion was expressed as to the conduct of the Police.

This was an every-day instance of the working of the present system. So far then it seemed to him that the power exercised by the Police was an incumbrance, and the Council might well consider the principles on which the law as it now stood was drawn. He would also say that the judgment of the Council upon this question seemed to him to be invited by the tenor of a Despatch addressed by the Court of Directors to the Government of India in November 1857. In this Despatch it was observed:—

"We suggested in our Despatch, to which your present letter is a reply, the necessity of making material changes in the constitution and organization of the Police, and observed that a mere attempt at reform without such changes would be a serious error, and would bring about its own failure from the public and general conviction of its inadequacy to the great object in view. We trust that the higher rates of pay proposed to be given, and increased vigilance on the part of the superintending authorities, will lead to considerable improvements in the Police, but we would have wished for some more extensive change than any which either the Lieutenant-Governor or yourselves have recommended in regard to its organization, which we cannot but fear will be open to the objections to which we formerly directed your attention."

Here then we had the apprehension expressed on the part of the Home Government, that a mere increase of salaries, unattended by other measures, would fail to give satisfaction. Certainly, larger salaries would be beneficial, and that benefit would not be lost by the adoption of the change which he now supported; and it appeared to him (Mr. Sconce) that the re-constitution of the organic functions of the Police was indispensable to success. In the murder case to which he had already alluded, the mischief attaching to the power of investigation vested in the Police, as regards the information of witnesses, was forcibly exhibited. In that case, two men were represented early in the enquiry as detailing to the Darogah how the so-called murderers had openly declared to them that they had done the deed. But the Sessions Judge, apparently discrediting their testimony, declined to examine them. It was shocking to our better sense to employ agents whose want of rectitude enabled them to coerce prisoners into confessions. This was bad enough if the confessions were true, but the iniquity was infinitely magnified if the confessions extracted were false. Thus it seemed to him that it was nothing but fair to conclude that the same systematic unscrupulousness which induced the Police to fabricate confessions would induce them to fabricate depositions. But it should be understood that he did not by any means, for the first time, suggest this change in the law. In 1847, the Sudder Court at Calcutta recommended a similar measure. On that occasion Mr. Tucker in his Minute observed that—

"He would not allow the Darogah to record a single deposition except that of the prosecutor; he should question witnesses verbally and class them accordingly. In like manner, prisoners should be simply asked to plead, and their reply, 'guilty' or 'not guilty,' recorded."

On the same occasion, Mr. Welby Jackson expressed his opinion as follows:—

"The Police should not be allowed to take down in writing any deposition or confession

whatever. After twenty-five years' experience I place little or no confidence in the depositions or confessions recorded before the Police. The confessions, even when true, are generally extorted, and the depositions are warped so as to answer the purpose the Police have in view."

Mr. Hawkins's opinion was not carried to the same extent, but he even said "no depositions of witnesses need be recorded; only a note of the leading facts to which they depose;" and the recommendation which was made in the letter of the whole Court addressed to the Government was to the following effect:—

"The reports of the Darogah should be dispensed with; nor should inquests be held by them except in offences of a heinous nature, or in cases of violent death. They should not be permitted to record any depositions of witnesses, which should first be taken by the Magistrate; nor would Messrs. Dick and Jackson allow them to put any questions by way of cross examination to the accused. They should merely report the nature of the case, the names of the parties sent in, and the purpose of sending them: their opinion should in no instance be recorded."

So there was the deliberate opinion of the Sudder Court in 1847, that the Police should not put on record their proceedings, and that witnesses should for the first time be examined before the Magistrate.

He did not deny that, in some respects, a recorded statement of the facts deposed to by witnesses might be useful. But practically the system worked as follows. There were cases no doubt in which the statements recorded by the Police tallied with those recorded by the Magistrate. In such cases public justice would lose nothing by the proposition which he now had the honor to make. There might be instances where the Police did not feel or display any personal interest, but if nothing was gained, nothing was lost by dispensing with Police records. On the other hand, a witness might deny the words put into his mouth, but if those words were originally untrue, it could be no matter of regret if the truth were eventually spoken; whereas, by requiring a witness to adhere to a false statement, the life, liberty, and property of an innocent man might be imperilled. But even on the supposition that the statement of a witness was true as recorded by the Police, it appeared to him that the law could not undertake to bind an unwilling witness to adhere to the statement which he was said to have made. Justice, as they all knew, was said to be blind, but law might equally be said to have no knowledge of facts. The statement of facts must be thrown on the conscience of parties. The sense of truth was the only legitimate source of constraint; and in fact the law would act as illegitimately as the Police were supposed to act, if it coerced men's words and put into their mouths language which it took, without foundation, to be true.

But, again, the statements made by the Police were in themselves not worth having They were taken hastily, carelessly, and incompletely, and in the end it might often be found unfair to a witness, and injurious to the administration of justice, to make an estimate of the evidence eventually taken, depend on the insufficient record of the evidence originally taken by the Police.

Another objection which in his mind weighed considerably against the adoption of the Section now under discussion was that in very many instances the enquiries made into the commission of a crime would be undertaken by the subordinate grades of Police Officers, by any indeed between a Burkundaz and a Darogah or Head Police Officer; and so it followed that, whatever confidence we might repose in selected men of the highest grade, we could not have the same security in the trustworthiness of the proceedings of more subordinate Officers.

So far as Bengal was concerned, the large increase of the number of Deputy Magistrates throughout the Province seemed to afford better means of securing the earliest record of the answers of prisoners and the information of witnesses. These Officers were now stationed in the interior of districts in considerable numbers, every Deputy Magistrate being in charge of three or four thannahs. In fact, in matters of internal organization, Magistrates were more wanted than Police Officers, and it seemed to him to be a question well worthy of consideration, seeing that the present system had, after a full and long trial, failed of success, whether the opportunity might not now be taken

of allowing judicial investigations to a large extent to take the place of examinations by Police Officers.

With these remarks he begged to move the omission of Section 82 and the substitution of the following—

"It shall be lawful for the Head or other Officer of Police to examine orally any person who is supposed to be acquainted with the facts and circumstances of the case; but the statement made by the person so examined shall not be reduced to writing so as to constitute the deposition of the witness and shall not be signed by him."

MR. LEGEYT said, he had not given notice of an amendment, for he knew that his Honorable friend on his left (Mr. Sconce), who was better able to deal with the subject, had undertaken to propose a Section in substitution for that now under consideration. He (Mr. LeGeyt) had objected to the Section in Select Committee, and he held strong opinions on the subject. His opinions coincided with those of the Honorable Member. He did not believe that the examination of witnesses was a part of a Policeman's business. If a Policeman were to sit down upon every occasion to examine a person supposed to be acquainted with the facts and circumstances of the case, it would be impossible for him to attend to the active duties of his Office. Thief-catching and judicial enquiry were totally distinct duties. He apprehended that the legitimate duty of a Policeman, upon receiving intimation of the commission of a crime, was to make rapid enquiries with a view to the detection of the perpetrators of that crime. Upon apprehending the persons whom he had good reason to suspect of being the perpetrators, he should be obliged to send them up without delay to the Judicial Officer, together with such persons whom he knew could give evidence in the case. The way in which, in the course of his (Mr. LeGeyt's) experience, he had seen Policemen conduct investigations, had strengthened his opinion on the subject. The Code of Criminal Procedure in Bombay generally contemplated the apprehension of offenders by the Village Police. The duty of the Village Police was to give immediate notice to the nearest Judicial Officer that he might commence a judicial investigation. There had been instances where more extensive powers had been entrusted, and improperly entrusted, to the Police, and sad results had ensued from the abuse of those powers. It was difficult enough to prevent Judicial District Officers from exceeding the limits of their proper duties in holding these investigations. But this Section, it appeared to him, proposed to give every Police Officer, that is, as he (Mr. LeGeyt) supposed, every Village Police Officer above the rank of a mere Chowkeydar the power of holding a judicial investigation, and of taking written evidence to be used thereafter on the trial of the accused. He would not detain the Council by going at great length into the details of the question, but he would just make a few observations on the principle involved in it. He desired to separate the functions of the Executive from those of the Judicial Police. He desired to see the Executive Police well organized and well supervised, and instructed in the discharge of their duties, and he would allow them to exercise no judicial functions whatever. If this were done and fully kept up to, he believed there was no reason why this country should not enjoy the benefit of a good and efficient Police. But if the duties of the Police were half judicial and half executive, the oppressions so long complained of would never be done away with. He believed that one great argument for requiring Policemen to take down a statement of the information obtained by them was that what they first took down was more likely to be true than what they might afterwards give in as evidence. It might be so, but if such a power was given to them, what was there to prevent them from delaying their proceedings till a story had been concocted, and then to bolster up a case with fictions and inventions of their own. He knew this had been done; he wished to prevent the possibility of it; he had no confidence either in the depositions or confessions made to the Police. He remembered a remarkable case in which some prisoners were brought before him for trial in a Session Court on a charge of murder and thuggee by an Assistant Superintendent in that Department. The chief evidence against them was that of the Officers of the Department and their own confessions taken by the Officers

of that Department. These prisoners, on being placed at the bar of the Session Court, had pleaded guilty. Their confessions handed up by the Superintendent of Thuggee, who was a Magistrate, were read over to them and confirmed by them. This, according to the law in force, was sufficient for conviction; but before recording a verdict he had thought it right to hear a Medical Officer's evidence as to a quantity of bones which had been produced in Court. The prisoners in their confessions stated these bones were those of individuals whom they had murdered and buried, and which were pointed out by them to the Thuggee Officers and disinterred. The English Medical Officer however swore that not one of the bones was of a human being! He (Mr. LeGeyt) of course questioned the prisoners, who then said that it was quite true they had committed no murder and knew nothing of these bones; but they had, in obedience to the Thuggee Officers, stated what they had written, and their motive was that, being in custody on suspicion, and having no chance of getting out, they were promised to be made approvers if they submitted to be convicted as murderers. His (Mr. LeGeyt's) belief was that the course of justice would run more smoothly and clearly if the Police were restricted to their proper duties, and properly and strictly supervised in the performance of them. The Stipendiary Magistrates were the fitting and proper persons to sift cases and arrange the evidence, and this, it was plainly seen, was the intention and plan of the Law Commissioners in England who framed the Code. He had hailed those Sections of the Code which separated the Police from Judicial investigations with much satisfaction, and had opposed their alteration in the Select Committee of which he was a Member. He should continue that opposition as long as he could bring it to bear, and with much satisfaction supported the amendment of the Honorable Member for Bengal.

MR. HARINGTON said, the Section now under consideration had nothing whatever to do with confessions. It related entirely to the examination of witnesses by the Police. There might be a convenience in considering this Section and the Section which related to Thannah confessions together, as had been done by the Honorable Members for Bengal and Bombay; but he proposed to confine himself for the present to the Section before the Council.

He wished at the outset of his remarks to correct a mistake into which the Honorable Member for Bombay had fallen. The Honorable Member said, that Her Majesty's Commissioners had set their face against the examination of witnesses by the Police just as much as against the Police being allowed to reduce into writing any confession or admission that might be made to them by an accused party. So far, however, from this being the case, the Section under consideration had not been introduced into the Code by the Honorable and learned Mover of the Bill, nor by the Select Committee to whom the Bill was referred in the regular course, but by Her Majesty's Commissioners themselves. The Honorable Member for Bengal had referred to the notes of Her Majesty's Commissioners on this part of the Code, but he had omitted to read that part of those notes which related to the powers to be exercised by the Police under the Code in their preliminary investigation of a case. With the permission of the Committee, he (Mr. Harington) would read the parts which the Honorable Member for Bengal had passed over. Her Majesty's Commissioners said:—

"The Police in the Provinces of Bengal are armed with very extensive powers. They are prohibited from enquiring into cases of a petty nature, but complaints in cases of the more serious offences are usually laid before the Police Darogah, who is authorized to examine the complainant, and to issue process of arrest, to summon witnesses, to examine the accused, and to forward the case to the Magistrate, or submit a report of his proceedings, according as the evidence may, in his judgment, warrant the one or the other course."

Then came the sentence just quoted by the Honorable Member for Bengal:—

"The evidence taken by the Parliamentary Committees on Indian Affairs during the Sessions of 1852 and 1853, and other papers which have been brought to our notice, abundantly show that the powers of the Police are often abused for purposes of extortion and

oppression; and we have considered whether the powers now exercised by the Police might not be greatly abridged."

The Honorable Member for Bengal, omitted the next sentence and plunged at once into the following paragraph, which related to confessions. In the sentence which the Honorable Member had omitted to read, Her Majesty's Commissioners proceeded to observe:—

"We have arrived at the conclusion that, considering the extensive jurisdiction of the Magistrates, the facilities which exist for the escape of parties concerned in serious crimes, and the necessity for the immediate adoption in many cases of the most prompt and energetic measures, it is requisite to arm the Police with some such powers as they now possess; and we have accordingly adopted many of the provisions of the Bengal Code on this head."

That was what Her Majesty's Commissioners had determined upon doing after full consideration and after taking evidence. They proposed that the Police should be allowed to examine witnesses as at present, but having given the Police this power, it never entered into their imaginations that the Police could be safely entrusted to exercise it, or indeed that it would be proper to invest them with it, unless they were at the same time required to record the examinations which they took; and Her Majesty's Commissioners accordingly introduced the Section now objected to. This was followed a little farther on by another Section, which provided that—

"In all cases, in submitting his proceedings to the Magistrate, the Darogah shall forward the statement of the person complaining, and the depositions of the witnesses, with a brief report of the names of the parties, the nature of the complaint, and the names of the witnesses, without any recapitulation of the evidence or expression of opinion as to the guilt of the accused, together with any weapon or property which it may be necessary to produce before the Magistrate. The Darogah shall further state whether he has forwarded the accused, or released him on bail or on his own recognizance."

Then came a note which said—

"Much has recently been done towards the improving of the mode of recording the proceedings of the Police in the investigation of Criminal cases. Much, however, still remains to be done. The unnecessarily voluminous mass of papers frequently sent by a Darogah to a Magistrate may be greatly reduced by a careful supervision, and by enforcing a strict adherence to the rules laid down for the guidance of the Police. The report of the Darogah, which is not evidence in the case, may safely be limited to the particulars noted in this Article."

Here then they had, first, the procedure to be followed by the Police in their preliminary investigation of a case, which Her Majesty's Commissioners had recommended, then their reasons for that recommendation, and then the form of the report which the Police were to send in to the Magistrate in every case; and it was worthy of remark that, so far from the Select Committee having proposed any addition to the report to be made by the Police, they had done done just the contrary, and instead of requiring the submission of the detailed depositions taken by the Police, all that the Section as amended by them directed was that the substance of the information obtained from the witnesses as reduced to writing should be forwarded.

Now the Honorable Member for Bengal, as far as he (Mr. Harington) understood the Honorable Member's amendment, had no intention of taking away one atom of all the very large powers which it was proposed to give to the Police. On hearing of the occurrence of a crime, they were to go to the spot, to apprehend the party or parties accused or suspected, to collect and examine the witnesses, and to send in the complainant and the accused with the witnesses to the Magistrate. But they were not to record any thing. The record was what the Honorable Member for Bengal objected to. The Police might exercise almost any amount of power, provided they had not recourse to pen, ink, and paper. These were the weapons in the hands of the Police of which the Honorable Member for Bengal was afraid. But, no, he was wrong; for, on referring to another of the Honorable Member's amendments, he found that the Police were to write something. The amendment referred to stated:—

"In all cases the Head Officer of the Police shall, day by day, record his proceedings by way of Diary, setting forth the time at which

the complaint or other information reached him, the time at which he began and closed his enquiry, the place or places visited by him, and a brief statement of the circumstances elicited by his investigation."

But if the Police were unfit to be trusted with pen, ink, and paper for the purposes mentioned in Sections 82 and 87 of the Bill as now framed, how could they be trusted to do what the Honorable Member's amendment would require of them? That, however, was not all; the amendment proceeded:—

"During the progress of, or at the completion of an enquiry, the Head Officer of Police shall forward to the Magistrate the statement of the complainant or other information, and shall set forth in a report the names of the parties, the nature of the offence, and a list of the witnesses bound over to appear, together with a brief indication of the points to which the evidence of each relates."

The Police were to be allowed to do all these things, but they were not to be allowed to reduce to writing on the spot the examinations taken by them. What, he would ask, did the Honorable Member for Bengal mean by an indication of the points to which the evidence of each witness related? What might, and what might not, be comprised under this word "indication?" It certainly appeared to him that Honorable Members who, like the Honorable Member for Bengal and the Honorable Member for Bombay, went so far as to say that the Native Police were unfit to be trusted to the extent mentioned in the Code, should go farther and say that they were not fit to be employed at all. It certainly appeared to him that, if the proposed amendments should be adopted, the Police would have all the powers which they now possessed, and that the principal, if not the only, check which existed against their abuse of those powers, would be removed. He had lately asked the Chief Commissioner of Police in Calcutta what he thought of the proposed amendments by the Honorable Member for Bengal, and whether in his opinion what was called the Thannah record could be safely dispensed with. His answer was—"Certainly not—if you take away the record, you deprive yourself of your only check upon the Police." He had put the same question to a very intelligent Punjab Officer who was staying with him, and had received from him the same answer.

The Honorable Member for Bengal had referred to a case which he (Mr. Harington) thought supported his view. The Darogah whose duty it was to make the preliminary investigation in that case appeared to have acted honestly and properly, but the Magistrate, dissatisfied with his proceedings, sent another Darogah with orders to discover and send in the guilty parties, which, as a matter of course, led to the results which followed. Whose fault was that? It was not the fault of the system, it was not the fault of the Police, it was the fault of the Magistrate. So far, therefore, from the case cited favoring the view of the Honorable Member for Bengal, it appeared to him (Mr. Harington) to make just the contrary way. If Magistrates, instead of driving their Police into irregular proceedings or acts of oppression and violence, by issuing injudicious orders, such as the one to which he had just referred, and he had seen many such orders, made proper allowance for the great difficulties by which the Police were often surrounded, and at the same time exercised a careful and vigilant supervision over them, much of the improper conduct of the Police now complained of would cease. He was not prepared to say that there was not great ground for complaint against the Native Police, but he firmly believed that they were not nearly so bad as they were represented.

The Sudder Courts at Calcutta, Madras, Bombay, and Agra, had not objected to the Section now under consideration. The late Honorable Member for Bengal was entirely in favor of it; as already noticed, it was introduced into the Bill by Her Majesty's Commissioners. One of these Commissioners was Mr. Hawkins, to whom the Honorable Member for Bengal had referred, as holding the same opinion as himself, and it certainly appeared to him (Mr. Harington) that, with this array of witnesses in favor of the Section, they would act most unwisely if they struck it out of the Bill, and substituted the amendment proposed by the Honorable Member for Bengal for it. He must say that Honorable Members who, while they were willing that the Police should continue to exercise all the

large powers with which they were now invested, refused to allow them to record any thing, because in their judgment no reliance could be placed on any thing that they wrote, would swallow a camel and strain out a gnat—would gulp down an elephant and be strangled by a flea.

For these reasons he should oppose the amendments proposed by the Honorable Member for Bengal and the Honorable Member for Bombay.

SIR CHARLES JACKSON said, he would confine his observations to the question which was now before the Council, namely, whether Section 82 should be omitted. Now what did that Section propose? It provided that

"The examination of witnesses by the Police shall be taken on the spot where the enquiry is held, in the presence of the Head Officer of a Police Station, or, in the event of his absence, in the presence of any Officer above the rank of a peon or burkundaz."

That is to say, a Darogah or Jemadar might hold this enquiry, and not only do that, but also decide what evidence should be recorded, and what rejected, for the Section proceeded—"and the substance of any material information obtained from them shall be reduced to writing, not in the form of question and answer," (which he, Sir Charles Jackson, thought would be some protection against his fabricating evidence,) "but in that of a brief narrative, which shall be transmitted to the Magistrate, as hereinafter provided, under the signature of the Police Officer by whom the enquiry shall have been made."

The provisions of this Section appeared to him to be most startling. Certainly no such power was known to the law as administered in England or in the Supreme Courts. It would be considered very strange indeed in England, if a Sergeant of Police were allowed to take down depositions and send them to the Magistrate. If the statement of the Police Officer was valuable, he should attend personally and depose to it. The objection to his written statement was that it substituted secondary for primary evidence; that, instead of taking the evidence of a witness, the Magistrate took his statement in writing. It might be useful to a Magistrate to have a statement of this sort as an index before commencing the investigation, but the same might be said with respect to the Magistrates in England and the Presidency Towns. If that were the object of this Section, it would save the Magistrate but ten minutes' labor. The report or statement of the Police Officer either meant something or nothing. If it meant something, it was most mischievous in its nature, inasmuch as it gave the Police Officer the power of fabricating evidence, and did not ensure his cross-examination with respect to it. If it meant nothing, it might well be dispensed with. It certainly appeared to him that, if the Magistrate thought this evidence necessary, he should examine the Darogah himself, and not receive his written statement.

MR. HARINGTON said, the Thannah record could scarcely be regarded in the light of secondary evidence, in fact it was no evidence at all, though it was often found of the greatest use to the Magistrate, the Sessions Court, and even the Nizamut Adawlut, and proved a most valuable aid to them in their endeavors to get at the truth. In Calcutta, the place, where a crime was committed, was always within a comparatively short distance from a Magistrate's Court; but in the Mofussil, the Magistrate's jurisdiction extended over immense tracts of country, and their Courts were often at so great a distance from the place of the occurrence of an offence, that it would be an impossibility for the Magistrates to make the preliminary investigations which now of necessity devolved upon the Police.

The CHAIRMAN said, he confessed he thought the Section proposed by the Honorable Member for Bengal was preferable to the Section now before the Council. He would, however, read to the Council an extract from a report by Mr. Spankie, the Magistrate of Saharunpore, on the subject of the investigation and record by Thannah Officials. Mr. Spankie said:—

"Before finally concluding this report, I would take the opportunity of once more recommending the complete withdrawal of all power of interference on the part of the Police Darogahs in the conduct and trial of Criminal cases. No reform will be more complete than one which would do away with the written investigation by Police Officers, and

none will be more thoroughly appreciated by the people. There would be no difficulty in arranging this reform, still less will impunity in crime be the result of it. The Police will not be the less bound to make their enquiries, and to investigate suspicious cases or charges of heinous crime. All that is recommended is that they should abstain from recording in writing the result of their enquiries, or put words into the mouths of witnesses which they never spoke, or suggest clues or motives designedly offered to mislead the European Officer."

He then suggested that—

"In lieu of the kyfeuts, which, in spite of the Nizamut Adawlut's Orders, in spite of fines and threats from the local Officers, still run their own length in every case, or at any rate claim a course to which they are not entitled—I would have a simple form like the following, sent with the prisoners from the Mofussil Police Officers."

On the whole, he (the Chairman) was of opinion that it would be better to put a stop altogether to the recording of *evidence* by the Police. He would allow only the names of the parties accused and of the witnesses to be forwarded to the Magistrate. He would also allow the Darogah to send a short statement of what each witness was expected to say; but he would not allow Darogahs to send up any depositions which would, as it were, bind witnesses to prove the facts recorded for them.

After some further discussion, the question was put that all the words after the word "burkundaz" in line 7 be omitted and the following words substituted for them—

"It shall be lawful for the Head or other Officer of Police to examine orally any person who is supposed to be acquainted with the facts and circumstances of the case, but the statement made by the person so examined shall not be signed by him or treated as part of the record, or forwarded or used as evidence."

Agreed to.

MR. HARINGTON moved that the following proviso be added to the Section:—

"Provided that nothing in this Section shall preclude such Head or other Officer of Police from reducing to writing the statement made by any witness."

After some conversation, the Council divided—

Ayes 4.	*Noes* 3.
Mr. Forbes.	Mr. Sconce.
Mr. Harington.	Sir Charles Jackson.
Sir James Outram.	Mr. LeGeyt.
The Chairman.	

So the Motion was carried, and the Section as amended then passed.

Section 83 provided as follows:—

"No Police Officer or other person shall offer any inducement to an accused person by threat or promise, or otherwise, to make any disclosure or confession, but if any disclosure or confession is voluntarily made by an accused person, it shall be reduced to writing and attested by two or more persons, not being Officers of Police, in whose presence it is made."

MR. SCONCE moved the omission of this Section and the substitution of the following:—

"It shall not be competent to a Head or other Officer of Police to examine a person accused of a criminal offence, or to reduce to writing any admission or confession of guilt which he may propose to make."

MR. LEGEYT said, he had placed on the paper an amendment of Section 83, which he preferred to that proposed by the Honorable Member for Bengal, though it was the same in principle and not very different in effect.

He (Mr. LeGeyt) wished to abolish the system of extracting confessions by the Police, that is, he would prevent the Police from extorting either by threats or actual violence, or by cajolery and false promises of pardon, admissions of guilt from persons whom they suspected of crime.

The system of obtaining these confessions seemed universal in India. In short, they were the only sort of evidence a native policeman seemed to think necessary.

He did not know upon what principle such a system could be defended. It had led to the most cruel and frightful torture being inflicted on persons, he feared, innocent as well as guilty. It made the policeman idle, brutal, careless, and kept him from even learning what his duty really was—instead

of hunting out crime, he considered his duty was to get a confession.

He (Mr. LeGeyt) did not, however, think it necessary to absolutely forbid a confession being received by a policeman, and on this principle he had provided in his amendment for the policeman writing a note of what he had heard and sending it up with the report of the case to the Magistrate. He also thought it quite proper that a policeman who had heard a prisoner confess should, in the proper way, depose to what he had heard, and for the purpose of refreshing his memory he should be allowed to use the memorandum or note just mentioned. The policeman so deposing would be subject to cross-examination, and he did not think there would be much danger of his swearing falsely under such circumstances; and if he did, detection would be very probable—nay, he thought, almost certain. Something had been said about the improbability of a policeman going up with a case to the higher Court. Now he (Mr. LeGeyt) would admit of no such impossibility, and no case of any importance should ever be sent up to a higher Court which was not placed, as it were, in the charge of some Police Officer who knew it from its commencement, and would be able to assist the Magistrate or Session Judge in the investigation. This he did consider the duty of the Police, and a legitimate duty perhaps of the higher ranks of the Force, but still it was one necessary to be performed. He had heard with satisfaction that day, that Magistrates were now spread over the country in Bengal, so as to be tolerably near every part of a district. Such Officers in the shape of Mamlutdars and Tehseeldars had always, or at least for many years past, been stationed all over the Zillahs in the Presidencies of Bombay and Madras, so that it really was no drain on the Police to oblige an Officer to go up with an important case at least to the Magistrate. If he went there, and was an intelligent man, he thought he would be pretty sure to be sent on with the case to the Session Court, and it ought to be so.

With these remarks, he begged to move as an amendment the omission of only the latter part of the Section commencing with the words "but if any disclosure," and the substitution of the following:—

"But if any disclosure or confession is voluntarily made in the presence of any Police Officer, it shall be competent to such Officer to note down in writing the substance of such statement, and to forward it with his report of the case to the Magistrate as hereinafter directed."

The question was then proposed that the latter part of the Section be omitted.

Mr. FORBES said, he looked upon this question as one of great importance, and perhaps throughout this whole Code of Criminal Procedure there was no question on a right decision of which the good or bad Police administration of the country would be more dependent than the one now before the Committee. He was, therefore, very unwilling to give a silent vote upon it, but he would state his views and opinions as briefly as he could.

The Honorable Member who had moved this amendment appeared to be of opinion that, if the Section as it now stood in the Bill became law, the Police would endeavor to obtain confessions from persons by violence, and that many of the confessions so obtained would be false, and these evils the Honorable Member hoped to obviate, not by prohibiting the Police from receiving a confession, not by declaring that no confession made before the Police should be received in evidence, but by enacting that no confession made before the Police should be recorded. Under the Honorable Gentleman's view, a confession might still be taken by the Police, and might still be received against the accused in evidence; only, instead of being given in the words of the prisoner who made it, it was to be given in the words of the burkundaz who heard it.

Now it certainly did appear to him, that not only would this be very unfair to the accused person, but also that it would be wholly inoperative in attaining that end of freedom for the accused from all ill-usage, which all persons in common with the Honorable Gentleman earnestly desired.

Now, as regards the first point, he thought that there were many advantages in obtaining the prisoner's story in his own words. When apprehended he was to a certain degree taken

unawares, and had not had time to arrange his story so as to suit his own ends; he had not become possessed of facts which would teach him what he had better suppress, or what he had better invent in order to remove impossibilities, or improbabilities, or contradictions. Then, again, it was surely most unjust to the prisoner, and in every way objectionable, to allow the evidence of his statement to depend upon what the memory or the inclination of a Police burkundaz might lead him to depose to. The expressions of the accused would be very probably misrepresented, criminating admissions only remembered, while circumstances giving a key to the whole matter, and removing all suspicion, would be omitted. If a confession was to be received in evidence, as the Honorable Gentleman himself was willing that it should be, he was at a loss to conceive on what principle of justice it was that hearsay evidence of that confession was to be preferred to the very words in which it was given.

Then, as regards the second point, as to whether the extortion of confessions would be prevented by precluding their being recorded, he was equally at a loss to see what bearing the one had upon the other. Confessions were not obtained to be used as direct evidence against an accused person, and even if they were, extortion would not be prevented by merely enacting that no confession should be recorded. But supposing that confessions were obtained only for the sake of the direct evidence they would afford of guilt, every Police Officer who extorted, a confession must suborn two witnesses to prove it to have been voluntary; and he asked, if it were likely that the Officer who had no scruple about suborning witnesses to an extorted confession, would take the trouble and run the risk of extorting a confession at all, when fabricating it would save him all trouble and all risk? The fabrication demanded no more perjury than the extortion, while it was easier, quicker, and less liable to detection.

The chief motive for endeavoring to obtain a confession was not the wish to use it as direct evidence of guilt, but the desire to recover stolen property, or to obtain some clue to the discovery of a crime; and merely forbidding Police Officers to *record* confessions would have no effect whatever in preventing them from *extorting* them. Whether a confession be recorded or not, the motive for obtaining it remained the same, and whoever, for the sake of finding stolen property or obtaining a clue to a crime, would extort a confession which he might record, would, for precisely the same object, extort a confession which he might not record.

He would suppose a case in elucidation of his point. A Police Officer extracted from a prisoner by torture a confession of where certain stolen property was concealed, his confession was recorded, and two witnesses were suborned to prove the confession and the discovery of the stolen property to have been voluntary. Now, if the confession could not be recorded, the only difference would be that witnesses would be suborned to prove a verbal confession and discovery of stolen property to have been voluntary, and he would ask the Honorable Gentleman what practically good result would have been attained by the change?

It was quite clear that Police Officers must be permitted to question persons on their apprehension as regards their names and places of abode and any suspicious fact. To abolish this would be to give almost an impunity to all crime of which there were no witnesses. The only question therefore was—should they trust to oral evidence of the accused's statement, or have it reduced to writing in his own words by the first superior Police Officer before whom he might be brought? It was argued apparently, that we ought not to admit the written confession, because we could not trust the honesty of the Police by whom it would be reduced to writing; but we must remember that the written confession would be taken only by a superior Officer of Police, while the oral evidence of confession, which it was said we were to admit, would be given by a common burkundaz; so that in fact the argument resolved itself into the exact reverse of what had been pressed upon the Government by all public Officers for many years past. They had all been saying that, in order to raise the character of their native servants for honesty, it was essential to raise their salaries. In the present

proposal, however, the rule would be that the lower the pay the greater the honesty, and that the burkundaz might be trusted when his superior Officer might not. He had himself no doubt that both for the elucidation of truth, and as a matter of justice to the accused, confessions should be recorded, and he should unhesitatingly vote against the present amendment.

SIR CHARLES JACKSON said, the question was simply whether the latter part of the Section should be omitted or not. There was a great omission in it, inasmuch as it contained no provision requiring the confession to be signed by the party making it. In the next place, it provided no sufficient safeguard for the correctness of the confession, for it was undeniably true, and he made this assertion after an experience of eleven years in the Presidency Towns of Bombay and Bengal, that to the Police there was attached a large excrescence of goindas or spies, and, in most cases, the two persons by whom confessions were to be attested under the provisions of this Section would be these goindas or informers, who were not a class of beings calculated to give credit or respectability to any transaction with which they were mixed up. The Honorable Member for Madras said that confessions were not sought for by the Police. That was a mistake, for the more convictions they obtain, the surer their promotion. There was unhappily little doubt that the Police obtained their confessions by threats or violence, and that, as a general rule, confessions were thus obtained; and though it seemed somewhat startling in principle to say that an apparently voluntary confession should not be received, yet he (Sir Charles Jackson) thought that they must legislate with reference to the clearly ascertained character of the Police and people, and bearing in mind the universal conviction that prevailed as to the mode in which confessions were obtained by native policemen, he was of opinion that some check should be placed on the admissibility of such confessions, and, as he had mentioned last Saturday, that no confession should be received unless made before a Magistrate.

MR. HARINGTON said, the first objection taken by the Honorable and learned Judge opposite (Sir C. Jackson) to that part of the Section which it was proposed to omit, was that it did not require that a confession or admission made by an accused party to the Police, and reduced by them to writing, should be signed by the party making it. He believed he was correct in saying that all confessions now made, whether at the Thannah, or before the Magistrate, were required to be signed by the parties who made them, and he had certainly no objection to the continuance of the practice, but the contrary. If the party could write, he should be required to affix his signature to the confession, but if he could not write, he should be required to make his mark. This would meet the first part of the Honorable and learned Judge's objections to the Section as it stood, but the Honorable and learned Judge went on to say that, in most cases, the two persons by whom, under the Section as now drawn, confessions would be attested, would be goindas or informers. Did the Honorable and learned Judge suppose that Magistrates would be so careless, so indifferent, so supine as to allow this? He (Mr. Harington) felt sure that it would not be allowed in the Supreme Court, and he was equally sure that it would not be permitted in the Mofussil. It had been incidentally mentioned at the last Meeting of the Committee, that a perwannah had been addressed to a respectable landholder, requiring of him to appoint persons to attest Thannah confessions. In the course of the week, he (Mr. Harington) had had on opportunity of seeing this document, and he found that it directed the appointment of persons to attest confessions, not at the Thannah, but in the Magistrate's Court. No doubt the requisition was very improper, but if any legislation was to be based upon it, it must be to put a stop, not to Thannah confessions, but to confessions before the Magistrate also. Were Honorable Members who supported the present Motion prepared to go that length? Were they prepared to say that, because a young Deputy Magistrate had issued an injudicious order of this nature, no Magistrate should be allowed to receive or record a confession? If this were done, he

(Mr. Harington) thought the interests of justice would greatly suffer

It appeared to him that, in considering the question before the Committee, they must also consider the amendments proposed by the Honorable Member for Bengal and the Honorable Member for Bombay. Before agreeing to the omission of the words proposed to be struck out of the Section under discussion, they should know exactly what words were to be put in. He agreed generally in what had fallen from the Honorable Member for Madras in respect to both amendments. If they could not trust the Police to record confessions made before them, he did not see how they could, with any show of consistency or justice, trust them to record the substance of what the accused party had said, much less to supply what was not recorded by oral testimony, which was the proposition of the Honorable Member for Bombay. If the amendments of the Honorable Member for Bombay were adopted, he (Mr. Harington) thought they would operate most unfairly to the accused, and if the amendments of the Honorable Member for Bengal were adopted, he thought that, in practice, they would prove most injurious to the cause of justice. He preferred the Section as it stood, and should vote against any alteration of it.

SIR JAMES OUTRAM said, he understood that the confessions made to Police Officers would not be used as legal evidence against the accused. He differed in opinion with those who said that *all* Police Officers could not be trusted. So far as the lower class of Native Police functionaries was concerned, he was quite ready to admit that no trust whatever could be placed in them, for, if interested in so doing, they would have no scruple to record confessions very different from what might have really been confessed to, and very different from what the parties might afterwards be willing to swear by. Under these circumstances he would vote against the latter part of this Section, which would admit of confessions being taken by the lower class of the Native Police, even if attested as proposed, aware as the Council was how such attestations were obtained.

THE CHAIRMAN said, he thought that the latter part of this Section ought certainly to be omitted. The Honorable Member for Madras had remarked that, if the amendment of the Honorable Member for Bengal were adopted, confessions would continue to be taken by the Police, and to be received in evidence against the accused, only they would not be recorded. It seemed to him (the Chairman) that, in this country, it would be safer to enact that no confession before a Police Officer should be used in evidence against the accused. The object, however, of having two attesting witnesses was to prove that the confession was made; but they could not shut their eyes to the fact that, in spite of all prohibitions, threats and in some cases even torture were resorted to by the Police for the purpose of extorting confessions. A confession might be extorted by threats or by actual torture before the accused was brought into the presence of the witnesses, who in such case would know nothing about it, and yet might prove that they heard the confession made. Whether torture were used or not, the accused might have reason to apprehend that he would be put to torture unless he confessed. Even if the attesting witnesses were in other respects above all suspicion, the very fact of the confession being made at a Police Thannah ought to exclude it from being received in evidence. According to English law, a confession could not be received in evidence if made under the influence of hope or fear. He thought it might be safely assumed that a large majority of confessions made to the Police or at a Police Thannah were, to say the least of them, obtained by means of threats, and he thought the safest course would be to exclude them, even though the Police should state that they were made voluntarily. It was not his object to protect the guilty, but that innocent persons should not be punished as if they were guilty. There was scarcely a single case in the Volume of Criminal Reports which he held in his hand, in which a confession was not given in evidence. He would not go so far as to exclude confessions altogether. He would allow confessions to be taken by the Police, provided no threat or torture were used, for the

purpose of enabling them to trace out the facts, but not for the purpose of being used as evidence against the accused.

The question to omit the latter part of the Section being then put, the Council divided :—

Ayes 5.	*Noes* 2.
Mr. Sconce.	Mr. Forbes.
Sir Charles Jackson.	Mr. Harington.
Mr. LeGeyt.	
Sir James Outram.	
The Chairman.	

So the Motion was carried.

The question was then proposed that the words proposed by Mr. LeGeyt to be substituted be substituted.

THE CHAIRMAN said, it appeared to him that these words ought not to be added. He thought "forwarding it (that is, the written substance) with his report of the case to the Magistrate," would introduce all the evils which Her Majesty's Commissioners wished to avoid, and would be in direct opposition to the view taken by them.

SIR JAMES OUTRAM said, it appeared to him to be very unfortunate that some distinction had not been made, so as to show the class of Police Officers referred to in the amendment. He had no objection to allow the higher class of Police Officers to exercise the proposed power, but he certainly would object to entrust the lower class of Native Police Subordinates with such power. The difficulty he experienced, however, was that, if he voted against the amendment, he would prevent the higher Police Officers from exercising what he deemed a very necessary power; whereas, if he voted in favor of it, he would be conferring such power on the inferior Native Policemen, who, he considered, would be too ready to abuse it.

THE CHAIRMAN said, he was about to remark, in reference to what had fallen from the Honorable and gallant Member, that it was his (the Chairman's) intention to propose the introduction of a new Section, to the effect that certain provisions of the Code should not be applicable to all classes of Native Officers.

After some conversation, Mr. LeGeyt and Mr. Sconce, with the leave of the Council, severally withdrew their amendments; and the Section, as previously amended, was then put and carried.

THE CHAIRMAN moved the introduction of the following new Section after Section 83, namely :—

"It shall not be competent to a Head or other Officer of Police to record any admission or confession of guilt which may be made before him by a person accused of a Criminal offence. Provided that nothing herein contained shall preclude any such Officer from reducing any such admission or confession to writing for his own information or guidance."

Agreed to.

THE CHAIRMAN moved the introduction of the following new Section after the above, namely :—

"No confession or admission of guilt made to a Head or other Officer of Police shall be used as evidence against a person accused of any Criminal offence."

Agreed to.

THE CHAIRMAN moved the introduction of the following new Section after the above, namely :—

"No confession or admission of guilt made by any person accused of a Criminal offence, whilst such person is in the custody of the Police, shall be used as evidence against the prisoner."

Agreed to.

SIR CHARLES JACKSON moved the introduction of the following new Section after the above, namely :—

"When any fact is deposed to by a Police Officer as discovered by him in consequence of information received from a person accused of any Criminal offence, then so much of such information, whether it amounts to a confession or admission, or not, as relates distinctly to the fact discovered by it, may be given in evidence."

Agreed to.

The postponed Section 84 provided as follows :—

"The Head or other Police Officer shall complete the enquiry with as little delay as possible. If the Head Officer has himself made the enquiry, he shall forward the accused under custody to the Magistrate, provided the evidence is such as to warrant that course, and the offence is not bailable, and shall bind over the prosecutor and witnesses to appear on or before a fixed day before the Magistrate. If a subordinate Police Officer have made the enquiry, he shall submit his proceedings to the Head Officer, who shall then proceed as if he had made the enquiry himself."

MR. SCONCE moved the omission of this Section and the substitution of the following :—

"The Head or other Police Officer shall complete the enquiry with as little delay as possible. If the person arrested appears from the information obtained to have committed the offence charged and the offence is not bailable, he shall be forwarded under custody to the Magistrate; and the Head or other Officer of Police shall bind over the prosecutor and witnesses to appear on or before a fixed day before the Magistrate. But when in any case a subordinate Officer of Police has made the enquiry, he may be required by the Head Officer of Police to submit his proceedings to him, or may do so without such instructions, and the Head Officer shall then proceed as if he had made the enquiry himself."

He said, the object of this amendment was simply to dispense with the necessity, under the Section as it now stood, of the subordinate Police Officer submitting his proceedings to the Head Officer in every case in which the former might be deputed to make a local enquiry. He (Mr. Sconce) proposed that the subordinate Officer should do so when required by the Head Officer, or without such instructions at his (the subordinate Officer's) discretion. The matter was only one of convenience, intended to meet the case of the enquiry being conducted at a place much nearer to the Magistrate than the place where the Head Police Officer happened at the time to be.

MR. HARINGTON said, as a general rule, the Code required Thannah enquiries to be made by the Head Officer of the Police, and it was only when the Head Officer at the Police Station was unable from any cause to proceed to the spot and make the enquiry in person, that he might depute a subordinate Officer to make it. The amendment proposed by the Honorable Member for Bengal, however, would permit the subordinate Officer, who might be a very inferior Officer, to judge in what cases he should, and in what cases he should not, send in the case to the Magistrate. Now this was a power which ought not to be given to a subordinate Police Officer. True, under the proposed amendment, the Head Police Officer might require his subordinate to submit the proceedings for his revision and orders, whenever he might think proper to do so, but he could not judge of the propriety or necessity without seeing the papers, the transmission of which to him would cause just as much delay as could ever take place under the rule objected to by the Honorable Member for Bengal. It should, moreover, be borne in mind, that the Head Officer, not the subordinate, was the person responsible to the Magistrate in all matters relating to the Thannah. For these reasons he should oppose the amendment.

After some further discussion, the Council divided.

Ayes 4.	*Noes* 2.
Mr. Sconce.	Mr. Forbes.
Sir Charles Jackson.	Mr. Harington.
Mr. LeGeyt.	
The Chairman.	

So the Motion was carried.

The further consideration of the Bill was postponed on the Motion of Sir Charles Jackson.

CATTLE TRESPASS.

MR. FORBES moved that a communication received by him from the Madras Government be laid upon the table and referred to the Select Committee on the Bill "to amend Act III of 1857 (relating to trespasses by Cattle)."

Agreed to.

NOTICES OF MOTIONS.

MR. HARINGTON gave notice that he would, on Saturday the 13th Instant, move the second reading of the Bill "to continue Act XXXIII of 1857 (to make further provision relating to Foreigners)."

Also the first reading of a Bill for the licensing of Trades and Professions in India.

PASSENGERS.

MR. LEGEYT moved that the Bill "to amend the law relating to the carriage of Passengers by Sea" be referred to a Select Committee consisting of Mr. Forbes, Mr. Sconce, and the Mover.

Agreed to.

EXECUTION OF MOFUSSIL PROCESS (STRAITS).

MR. LEGEYT moved that the Bill "to extend to the Straits Settlement Act XXIII of 1840 (for executing, within the local limits of the jurisdiction of Her Majesty's Courts, legal process issued by Authorities in the Mofussil)" be referred to a Select Committee consisting of Mr. Forbes, Mr. Sconce, and the Mover.

Agreed to.

ELECTRIC TELEGRAPHS.

MR. LEGEYT moved that the Bill "for regulating the establishment and management of Electric Telegraphs in India" be referred to a Select Committee consisting of Mr. Forbes, Mr. Sconce, and the Mover.

Agreed to.

STANDING ORDERS COMMITTEE.

THE VICE-PRESIDENT moved that Mr. Harington be added to the Standing Orders Committee.

Agreed to.

The Council adjourned.

Saturday, August 13, 1859.

PRESENT :

The Hon'ble Sir Barnes Peacock, *Vice-President*, in the Chair.

Hon. Lieut.-Genl. Sir J. Outram,	H. Forbes, Esq.,
Hon. H. B. Harington,	Hon. Sir C. R. M. Jackson, and
P. W. LeGeyt, Esq.,	A. Sconce, Esq.

THE VICE-PRESIDENT read a Message informing the Legislative Council that the Governor-General had assented to the Bill "to continue in force until the end of the year 1859 Act XXVIII of 1857 (relating to the importation, manufacture, and sale of Arms and Ammunition, and for regulating the right to keep or use the same)."

POST OFFICE.

MR. HARINGTON said, he was under the necessity of asking the Council again to allow him to postpone the motion (which stood in the Orders of the Day) for the first reading of a Bill to amend Act XVII of 1854 (for the management of the Post Office, for the regulation of the duties of postage, and for the punishment of offences against the Post Office), as he found that the amendments proposed by the Director General of Post Offices required more consideration than from the pressure of other business he had been able to give them.

TRADES AND PROFESSIONS.

MR. HARINGTON said, pursuant to the notice which he gave on Saturday last, he had now the honor to move the first reading of a Bill "for licensing trades and professions in India." In bringing in this Bill, he was sensible that he had undertaken a task of no ordinary difficulty, and he thought it not improbable that the Bill would meet with a very considerable amount of opposition, if not within these walls, certainly beyond them. But he trusted that, when the measure came to be fully considered, it would be found to be a wise and politic measure, and one which, in existing circumstances, the Government of this country was fully justified in adopting.

By some he should probably be told that it was opposed to sound principles of political economy to put a tax upon trade or upon the profits arising from trade, but he considered that the English property tax was a sufficient and conclusive answer to any such objection. What was right in principle in England as regarded a measure of this nature, could scarcely be wrong in principle here. The English Act said that—

"Upon the annual profits or gains arising or accruing to any person residing in Great Britain from any kind of property whatever, whether situate in Great Britain or elsewhere, there shall be charged yearly, for every twenty shillings of the amount of such profits or gains, the sum of seven pence; and upon the annual profits or gains arising or accruing to any person residing in Great Britain, from any profession, trade, employment, or vocation, whether the same shall be respectively carried on in Great Britain or elsewhere, there shall be charged yearly, for every twenty shillings of the amount of such profits or gains, the sum of seven pence.

"And upon the annual profits or gains arising or accruing to any person whatever, whether a subject to Her Majesty or not, although not resident within Great Britain,

LIBRARY

from any property whatever in Great Britain, or any profession, trade, employment, or vocation exercised within Great Britain, there shall be charged yearly, for every twenty shillings of the amount of such profits or gains, the sum of seven pence."

Others might say that, in practice, the measure would operate unequally and partially, and would affect certain classes only, who could not with justice be taxed in the manner proposed, while others were exempt; others again would perhaps say that, although there was nothing objectionable in the principle of the Bill, in carrying out its provisions any approach to a fair or proportionate assessment would be almost impossible, and the consequence would be endless heart-burnings and very wide-spread dissatisfaction. These and other objections, which were likely to suggest themselves to different persons, he should endeavor to answer in the course of the remarks with which he considered it necessary and proper to trouble the Council before the motion which he had made was put from the chair.

Though the title of the Bill did not disclose the real purpose for which it was introduced, he did not think he should take Honorable Members or the public at large by surprise, when he mentioned that the sole and entire object of the Bill was to augment the public revenue. The licensing of trades and professions was certainly not required for Police purposes, or for the convenience of the public. It was not pretended that the system of allowing all persons to carry on any trade or profession they pleased, supposing the same to be lawful in itself, without let or hindrance, and without any interference or supervision on the part of the Government, had been productive of any public inconvenience or injury so as to call for the intervention of the Legislature, or the imposition of any restrictions. It was not on that ground that it was proposed to require by law that all trades and professions should be carried on for the future under the sanction of a Government license. He repeated that the sole object of the Bill was to open up a new source of public revenue. That, then, was the object of the Bill. The necessity for the Bill was to be found in the present financial condition of the country. To establish this necessity it was only necessary for him to refer to the full and lucid statement which was made not many months ago in that Chamber by His Excellency the Right Honorable the Governor-General, in introducing the Bill to alter the rates of Customs Duties on goods imported or exported by sea. In that statement His Excellency took them back to the time (and the interval was not a very wide one, extending over a period of little more than two years) when by good Government and by a prudent economy the revenue of India very nearly equalled the expenditure, the difference being only eighteen lakhs. His Excellency took them back to the time when, to quote his own words,

"The Government had almost touched the point, at which, amongst States as amongst individuals, all who desired to administer their financial concerns with honesty and safety, must aim—namely, a balance of expenditure with revenue. It saw before it an early opportunity of being able to prosecute large works of material improvement, without either increasing the burdens of the people, or anticipating the resources of its own successors, on whom the future administration of the country should devolve.

"This was a prospect to which he had looked forward eagerly. But it was not permitted to him to realize it. The new financial year was little more than a week old, when the spark fell which lit up a conflagration, the embers of which were now and only now dying out. That was no longer the time to talk of balance sheets. Every hand, and heart, and brain, were needed for the struggle. We have now risen from that struggle, our honor vindicated, our power secured, and our character, as masters merciful in our strength, not, he ventured to hope, unworthily maintained. But we had risen with resources drained; in the opinion of some, though he did not share in that opinion, with resources well nigh exhausted; and it was incumbent upon the Government to increase the revenue by the readiest and soundest means which it could devise."

His Excellency then proceeded to show how rapidly a deficit of only eighteen lakhs had been increased to the enormous sum of 817 lakhs, and he expressed his fears, which had proved too well founded, that, at the end of the current commercial year, that is, on the 30th April last, the deficit would exceed the enormous sum of 1,300 lakhs of Rupees.

"To meet this expenditure," His Excellency went on to say, "the Government had

been compelled to have recourse to exceptional resources. By debentures in England, in the course of the past year, eight millions sterling had been raised. By the loan of last year in India, counting from the opening of it to the present day, namely, twenty-two months—the amount raised was 914 lakhs. These two sums together did not meet the expense of which he had just spoken But the expense was met within a very trifling sum from the excess which existed between the cash balance in May 1857 and the cash balance in May 1858. The difference between these two balances amounted to 414 lakhs, and that sum, joined to the two sums raised by loan in England and India, very nearly came up to the full amount of the expenditure he had mentioned, including in this the estimated deficit of the current year. Now, whatever might be done by loans and whatever might be the opinions held as to the loans which had been levied, and as to the extent to which they should be raised in England or in India respectively, and there was a difference of opinion on those points—it was incontrovertibly the fact that, come the loan from where it might, the Government of India must find the interest for it. On that ground alone he asked the Legislative Council to give their assent to this Bill. It was the duty of the Government to provide at once for the payment of the interest that would be required by increasing the revenue by every means within its reach which sound policy would allow; and of all such means he knew of none which would be less injurious to public or to private interests than the proposed measure of raising the duties in the Tariff."

This, then, was the condition of the finances of India at the close of the last financial year. In the short period that had since elapsed, it was not to be supposed that very much would be effected in the way of improvement, but he was happy to say that a good deal had really been done, and that the measures which had been adopted with a view to a strict economy in the administration of affairs and to increase the revenue had proved more successful than was anticipated; in proof of which he might mention that, while the deficit exhibited in the anticipation sketch estimate for 1859-60 was 724¼ lakhs, the deficit for 1859-60, obtainable from the last rough estimate for July, was 684 lakhs, the difference being upwards of forty lakhs of Rupees.

It was of course impossible that this deficit, though little more than half what it was in the preceding financial year, could be permitted to continue. It could only be followed, and that speedily, by the most calamitous results, and it had therefore again become incumbent upon the Government to have recourse at once to means to equalize income and expenditure.

The question then arose, how could this best be accomplished? No doubt many would exclaim, diminish your expenses, bring them down with an unsparing hand to the level of your income. That was, in truth, being done in every possible way and as rapidly as circumstances would admit. All Military and other appointments called into existence by late events, which could be dispensed with without public inconvenience, had been or were being reduced. Considerable reductions had been made in the numerical strength of the several Native Cavalry and Infantry Regiments, both regular and irregular. Many of the Police levies had been disbanded, and the strength of those which it was considered necessary for the present to retain had been reduced. Further considerable reductions in this Force might hereafter be found practicable, but their extent must depend in a great measure upon the decision which might be come to in England upon the important question of the re-organization of the Native Army of Bengal. The Council were aware that this question was now before Parliament, whose decision, or that of Her Majesty's Government at home, must be awaited before anything further could be done in this country. A Commission was now sitting at Bombay, composed of Officers from the three Presidencies, the object of whose appointment was to ascertain what reduction could properly be made in the Military Department, and what plan could be adopted to reduce and keep down expenditure. This Commission, after completing its enquiries at Bombay, would proceed first to Madras, and afterwards to Calcutta. A second Commission had been ordered to assemble also at Bombay, with a view to the institution of similar enquiries in the Naval Department of the public service, and in all branches connected therewith. It was no secret that considerable reductions had been proposed in the salaries of the Covenanted Civil Servants of Government throughout India, based upon the report of Mr Ricketts, who was appointed some years

ago to revise the salaries of the Civil Establishments in the three Presidencies, and to propose such alterations therein, with a view to a reduction of expense, as he might consider proper. The proposed reductions might at once have been carried into effect by the Government in this country, but as the question was one of considerable importance, and as in its decision the Government at home had an interest nearly equal to that of the Government in this country, it was considered proper that the Home Authorities should be consulted on the subject, and that whatever was done should be done with their concurrence. The orders of the Home Government might shortly be expected, but in the meantime he might mention that the saving expected from this source amounted to less than eleven lakhs of Rupees per year. As a permanent measure, it was considered that reduction in this branch of the public service could not prudently or safely be carried further. He was sure all would agree with him that it would be a false economy to risk the efficiency of the Establishment, which would be the inevitable consequence of greatly underpaying it. Even as it was, he believed he was right in saying that one of Her Majesty's Ministers, who was greatly in favor of what was called the competition system, had lately stated in his place in Parliament that, although a great many very superior young men had entered the Indian Civil Service under the operation of that system, it had not produced all the fruits expected from it, and that the inducements which it offered were not sufficient to tempt out the best men from the two English Universities. What then would be the case if any considerable reduction in the emoluments of the service took place? Already he was informed that many who had come out under the new system were disappointed with their prospects, and thought that they might have turned their abilities and acquirements to better account at home. All new grants in aid of or for promoting education amongst the natives had been stopped, and this was perhaps one of the most painful parts of the economy which had been forced upon the Government by the extraordinary expenditure rendered necessary by the events of the last two years. The measures which he had just described, either as having been already adopted, or as being in contemplation, would, he thought, show that the Government was in earnest, and that it was determined fearlessly and unflinchingly to do its duty by enforcing the most rigid economy in every branch of the public service consistently with a due regard to efficiency, which he need not remark included honesty no less than many other qualities. As regarded the Uncovenanted branch of the Civil Service and the European Officers of the Army, he did not think there was room for any great reduction in their allowances, certainly not in the lower ranks of the Army. The expenses of living had increased so greatly of late years that, what with their messes, bands, and uniform, Subaltern Officers, however disposed to be prudent and economical, found it very difficult to live on their pay and avoid debt. In the Uncovenanted branch of the Civil Service, here and there appointments perhaps existed, the salaries of which might be considered high even in India, and might admit of some reduction, but such appointments certainly constituted the exception, not the rule; and he should be extremely sorry to see any considerable reduction permanently made in the salaries of this class of Officers generally. These remarks applied more particularly to their native officials, scarcely one of whom was overpaid. In the lower branches it was notorious that the salaries, with reference to the duties to be performed and the temptation to which the Officers were exposed, were most inadequate, and there could be no doubt that, if the Government did its duty to those Officers, a very large additional expenditure would be the consequence, but this of course could not at present be thought of.

He passed on to notice the measures for improving the public revenue that had been adopted, or were in contemplation, or had been proposed. The first of these was the Act for raising the rates of Customs Duties on goods imported or exported by sea, to which he had already referred. This Act applied alike to Europeans and Natives, but as the articles liable to duty under it were, for the most part, used to a very

much greater extent by the European than by the Native population, the Act, there could be no doubt, pressed much more heavily upon the former than upon the latter class. That such would be its effect was foretold by His Excellency the Governor-General, who remarked in the statement from which he had already quoted largely, that

"These charges would bear mainly on the European community, but he thought he might appeal to that community to submit ungrudgingly at a moment like the present to the increase which they would make to their burdens."

He (Mr. Harington) laid much stress upon this point, in order that our native fellow-subjects might see that we had not shrunk from taxing ourselves as well as them, and that new taxation having become absolutely necessary, we began by taxing ourselves principally.

He would further remark, as a proof of the great anxiety that the Government had always felt to avoid as much as possible imposing any burden in the way of taxation on its native subjects, that, with exception to the trifling duty upon salt, a very large portion of the native community, including all the bankers and almost all the traders in the country, contributed nothing at all to the revenue of the State in return for the protection, security, and advantages they enjoyed under the British Government.

The next measure to which he would refer was the increase in the duty on Malwa Opium. This had been increased from 400 to 500 Rupees per chest by an order in Council, which the Government had the power to pass without the sanction of the Legislature. He need scarcely remark that this duty did not press upon the people of India. The increase expected from the alteration in the duties on Malwa Opium and on the various articles mentioned in the new Tariff was 130 lakhs, namely, 37 lakhs on the former and 93 lakhs on the latter. He was happy to have it in his power to say that these expectations had been more than realized. He believed, too, he might add, that the appeal made to the European community by His Excellency the Governor-General, at the time of proposing the increased duties, had been heartily responded to, and that all, admitting the necessity of what had been done, willingly submitted to it.

He now came to the Bill relating to Stamps introduced by his Honorable friend the Member for Bengal. This Bill was still before the Council, and it was not possible to say what would be the effect of it on the public revenue, but it was confidently expected that the sale of Stamps other than judicial would produce a considerable sum of money without the charge to those requiring to use Stamps of that class being much felt. The masses of course would not be affected in the slightest degree by the proposed law. With regard to judicial Stamps, although some increase was expected from them, he doubted whether it would amount to much. Indeed, if many of the reforms now in contemplation were carried out, such, for instance, as doing away with the appeal in simple actions of debt and the like up to a certain amount, not allowing any special appeal in cases of the same kind in which the amount or value of the claim did not exceed five hundred Rupees, and constituting Courts of final jurisdiction, in so far as the facts were concerned, in all cases, whatever might be the amount, there would probably be a loss instead of any gain in this branch of the public revenue.

In addition to the sources of revenue which he had just mentioned, it had been suggested that the Salt Duty at the three Presidencies might be raised without being very sensibly felt by the people; that a duty might be imposed upon tobacco grown in the country; that an income tax, as well as a succession duty, might very properly be levied; and that a large sum might be raised by a tax upon houses.

With regard to the proposition to raise the duty upon salt, the Council were aware that Bills had lately been brought in by the Honorable Members for Madras and Bombay, the effect of which, should they pass into law, would be to increase the amount of the revenue now derived from salt in those two Presidencies. The Government of India had already power by law to raise the duty paid by salt in the Lower Provinces of Bengal to Rupees 3-4 per maund. The duty now paid was Rupees 2-8 per maund. Whether any increase should take place, and if so, what

should be its extent, were questions which would be considered on the receipt of a report which had been called for from the Government of Bengal. In the North-Western Provinces a duty of Rupees 2 per maund was levied on all salt crossing the frontier, and a further duty of 8 annas per maund on any salt which might pass Allahabad. A uniform duty of Rupees 2-8 per maund had been proposed on all salt crossing the Frontier, the extra duty now taken at Allahabad being abolished. Some Officers had indeed proposed that the duty should be increased to Rupees 3 per maund. The question of increasing the duty on salt in the North-Western Provinces had to be considered in connection with Oude, which was a large salt-producing country, and reports had been called for from both the Chief Commissioner and the Lieutenant-Governor of the North-Western Provinces. Their answers might possibly show that it was not expedient to make any alteration in the rates of duty now levied in the North-Western Provinces, but this was a point upon which he purposely abstained from giving any opinion at present, because he felt that he was not in a position to do so with satisfaction to himself. In the Punjab measures had been introduced which would have the effect of increasing the salt revenue in that Territory.

An income tax and a succession duty had many advocates both at home and in this country, but as regarded personal property belonging to natives, it was believed that there would be very great difficulty in ascertaining the amount on which the duty should be assessed, without having recourse to a mode and degree of inquisition which, while it would often end in defeat, would prove extremely vexatious and harassing, and repugnant to the feelings of the people. It was also felt that the enforcement of any tax or duty of this kind would generally be a matter of great difficulty, without resorting to measures which, though perfectly legitimate in themselves, would have the appearance at least of considerable harshness.

For these reasons chiefly the Government had not hitherto considered it advisable to introduce either of the two taxes or duties just mentioned as respected personal property. As regarded landed property, a doubt had been raised whether there were not legal impediments to their imposition in Bengal; while in the North-Western Provinces, and in the other parts of India, where the settlement was not permanent, but for a term of years only, it was open to the Government to increase the amount of its demand whenever the settlement came under revision.

To a house tax and to a duty upon tobacco grown in the country objections had been taken by Officers of high positions and large experience, whose opinions were entitled to great respect, and the Government had deemed it advisable that there should be further enquiry and a more full consideration of the subject, before it came to a final decision, either one way or the other, as regarded both these imposts, as well as in respect to an income tax and a duty on successions.

The last additional source of revenue which had been suggested was that which formed the subject of the Bill which he was about to ask the Council to allow to be read a first time, namely, a tax by means of a Government license for carrying on trades or professions.

It was not to be supposed that a tax of this kind could be proposed without giving rise to a good deal of difference of opinion, but after consulting a large number of persons, both Europeans and Natives, in all parts of the country, he found a very great preponderance of opinion in favor of the tax. From many quarters he had received much valuable advice and many useful hints, and he would particularly acknowledge in this place the assistance which he had received in these respects in framing the Bill from Mr. Martin Gubbins, one of the Judges of the Sudder Court at Agra, Mr. Muir, Junior Member of the Sudder Board of Revenue at Allahabad, Mr. Frederic Gubbins, the Commissioner of the Benares Division, Mr. George Campbell, the Judicial Commissioner at Lucknow, and the learned Clerk of the Council, whose aid, most cheerfuly rendered on this as on all other occasions, he had found most useful, and he took this opportunity of thanking him for the same.

One great argument in favor of the present measure was that, in so far as

native traders were concerned, it introduced no new principle but merely revived one of their own modes of taxation. In Bengal all trades were formerly taxed under the head of "Sayer," and when the Sayer duties were abolished, if he recollected rightly, the Government reserved to itself the right of reviving at any time the tax upon trades. In the Madras Presidency a tax of a somewhat similar character, called "Mohturfa," was still in existence, and yielded a revenue of about twelve lakhs of Rupees a year; but the mode in which this tax was levied was very unsatisfactory and very uncertain, its realization being left very much to the views of individual Collectors. It also operated most unequally, and while it extended to many articles or acts, such for instance as the sifting of ashes and the furnaces of working jewellers, which ought not to be taxed, it omitted many trades or articles upon which it might be legitimately imposed. It was proposed, therefore, to repeal the present laws, and to substitute this Bill for them.

It might be supposed by some that, in order to carry out the Bill fairly and properly, as regarded both the State and the persons to whom it would apply, the same vexatious enquiry into every trader's or professional man's circumstances or profits would be necessary, which had been so strongly objected to in the case of an income tax or a succession duty, but nothing of that kind was intended. It was proposed that the tax upon the license to be taken out should be in all cases exceedingly light, and being light, it was felt that the amount might be fixed in an arbitrary manner, that is to say, without that enquiry into or that degree of regard to a man's professional income or profits, which would be necessary, if it were attempted to apportion the amount of the tax thereto. We were told by Adam Smith that, in a light tax a considerable degree of irregularity might be supported, in a heavy one it was altogether intolerable; and again, the extreme inequality and uncertainty of a tax assessed in the manner proposed in this Bill could be compensated only by its extreme moderation, in consequence of which every man found himself rated so very much below his real revenue, that he gave himself little disturbance, though his neighbors should be rated somewhat lower. He had acted upon these views, in which he fully concurred, in framing the present Bill.

It could scarcely be necessary for him to say that, although the price to be paid for the license would, in the first instance, come out of the pocket of the person taking out the same, it would not eventually be borne by him. He would have no difficulty in knowing where to go for reimbursement, namely, to his customers, who would really pay the tax, and as it would be thus spread over the entire population in proportion to each man's expenditure, it would scarcely be felt. The rich man who was clothed in purple and fine linen, and fared sumptuously every day, would pay comparatively largely, and he could well afford to do so; the poor man would pay very little. This was quite right and proper, and seemed to meet in a great degree the objection that the Bill would operate unequally.

He would now briefly allude to the provisions of the Bill. Section I repealed the laws in Madras relating to Mohturfa. In Bombay, where duties on trades were formerly levied, they had been done away with by Act XIX of 1844.

Section II required a license to be taken out to carry on any trade or exercise any profession. Section III declared who were to be deemed persons carrying on trade. Section IV provided by whom licenses were to be granted. Section V enacted what particulars were to be specified in the license. Section VI related to the commencement and expiration, and Section VII to the renewal of licenses.

Section VIII he would read, as it showed how the tax was to be assessed. The Section provided as follows:—

"Upon all licenses to be granted under this Act, there shall be paid by the persons to whom such licenses are granted the several annual sums hereinafter mentioned (that is to say):

If the person to whom the license is granted shall be assessed

Under	Class	I	... ...	2,000	Rs.	yearly.
"	"	II	... ...	1,000	"	"
"	"	III	... ...	500	"	"
"	"	IV	... ...	250	"	"
"	"	V	... ...	100	"	"
"	"	VI	... ...	50	"	"

Under	Class VII	... ...	25	Rs. yearly.
„	„ VIII	... ...	10	„ „
„	„ IX	... ...	5	„ „
„	„ X	... ...	2	„ „

He might add that bankers only would come under the first two Classes.

Section IX empowered the Collector, or other Officer authorized to grant licenses, to determine under what class persons should be assessed, and to appoint a Punchayet, consisting of three or more respectable inhabitants of the neighborhood, to aid him in making such assessment. Section X required the assesment to be in accordance with the Schedule. Section XI related to the appointment of Chowdrees. Section XII related to the preparation and publication of the list of persons requiring to be licensed under the Act. Section XIII to the inspection of the list, and Section XIV to appeals from the orders of Collectors. Section XV required such appeals to be written on stamp paper. Section XVI related to the preparation of a revised list. Section XVII prescribed the penalty for not taking out a license. Section XVIII required licenses to be produced on demand. Section XIX provided for the adjudication of offences and recovery of penalties. Section XX declared that persons holding office or employment not under Government were to be deemed persons carrying on trade, &c. Section XXI enacted that the Act was not to apply to persons holding office under Government, and Section XXII that the Act was not to apply to workmen for hire, or cultivators of land, &c. It would be deserving of consideration hereafter, whether the Collector or other Officer authorized to grant licenses should not have power to except any person carrying on any petty trade, of whose inability to pay the small sum of two Rupees per annum, without great difficulty, he might be satisfied, or whether the exception contained in this Section might not properly be carried farther.

These then were the provisions of the Bill. He was very sensible that many imperfections would be found in it, but he trusted that, with the aid of Honorable Members, these would be corrected in Committee should the Bill ever reach that stage. If the Council allowed the Bill to be read a second time, it would be published in the usual course for general information, and the publication would doubtless elicit many valuable remarks and suggestions from the public, and from the local Governments and the Officers subordinate to them, which would be of great use in the revision of the Bill, and he trusted that the result would be a useful and practicable measure of taxation, without the imposition of any very great pecuniary burden upon any one. What amount of revenue the introduction of the measure might be expected to produce, it was very difficult to say; but he thought they might safely calculate upon at least from one hundred to one hundred and fifty lakhs per year. The Bill would be printed and circulated without delay, and he hoped to move the second reading on that day fortnight. On that occasion he should not ask Honorable Members to commit themselves to any of the details of the Bill, but simply to its principle—in other words, that it was not wrong in principle in India to raise revenue by means of a license on trades and professions. This would leave every Honorable Member at liberty to do what he pleased in respect to the details of the Bill, and to propose any alterations in them that he might think proper, as also to vote against the third reading if he objected to the Bill in the form in which it might then appear. But, looking to the difficult position in which the Government was placed by the state of the finances, and to the impossibility of carrying on the Government properly, after every possible reduction had been effected, without an adequate revenue, for money was as much the sinews of Government as it was of war, he ventured to hope that the Bill would receive the cordial support of the Council. He had to apologize for having trespassed at such great length upon the time of the Council, and thanking them for the patient hearing that they had accorded to him, he now begged to move that the Bill be read a first time.

The motion was carried, and the Bill read a first time.

CUSTOMS DUTY (BOMBAY).

MR. LEGEYT moved the first reading of a Bill "to amend Act I of 1852

(for the consolidation and amendment of the Laws relating to the Customs under the Presidency of Bombay)." He said, the object of this Bill was to raise the Customs Duties, hitherto levied under Section XX Act I of 1852, on spirits exported from any Port in India and imported to any Port within the Presidency of Bombay. The Government of Bombay had lately, under the authority vested in them by Act III of 1852, raised the Excise Duty on spirits manufactured in that Presidency from nine annas to one Rupee per gallon. Section XX Act I of 1852 fixed the Import Duty on any manufactured spirits which had not paid Excise at nine annas per gallon.

It had been thought expedient to raise this Import Duty to make it equal to the Excise fixed under Act III of 1852. This Bill had therefore been proposed and had been approved by the Government of Bombay and the Government of India. It proposed to repeal Section XX Act I of 1852, and to enact that an Import duty, equal to the Excise imposed under Act III of 1852, should be levied on all spirits exported from any Port of British India to any Port of the Bombay Presidency, on which Excise had not been paid. With these remarks he begged to move the first reading of the Bill.

The Bill was read a first time.

FOREIGNERS.

MR. HARINGTON moved the second reading of the Bill "to continue in force for a further period of two years Act XXXIII of 1857 (to make further provision relating to Foreigners)."

The Motion was carried, and the Bill read a second time.

JAMSETJEE JEJEEBHOY BARONETCY.

MR. LEGEYT moved the second reading of the Bill "for settling Promissory Notes of the Government of India producing an annual income of one lakh of Rupees, and a Mansion-house and hereditaments called Mazagon Castle, in the Island of Bombay, late the property of Sir Jamsetjee Jejeebhoy, Baronet, deceased, so as to accompany and support the title and dignity of a Baronet lately conferred on him, and the heirs male of his body, by her present Majesty Queen Victoria, and for other purposes connected therewith."

The Motion was carried, and the Bill read a second time.

MR. LEGEYT moved that the Standing Order be suspended, in order that the Bill might be passed through its subsequent stages. His ground for making this motion was the extreme anxiety felt by the parties concerned. The Council were aware of the considerable delay which had already taken place in the matter. It was at first thought that the Bill would be passed through the Council within a short time. It was subsequently discovered that the Incorporation Clause rendered it necessary to send the Bill to England for the sanction of the Crown. In the mean time Sir Jamsetjee died, and the Bill was returned for the purpose of being modified, so as to suit the altered circumstances of the family. This had been done in the Bill, which was now before the Council, and which had been transmitted to him by the present Baronet, with an earnest request that no time should be lost in carrying it through the Council. The revised Bill would also, on account of its Incorporation Clause, require to be sent to England for the sanction of the Crown, and as the measure was entirely of a private nature, he trusted there would be no objection to the suspension of the Standing Orders. The Bill originally introduced had been fully considered by the Council before it was sent to England, and the alterations now made in it were necessary to adapt the Bill to the present circumstances of the family, in consequence of Sir Jamsetjee's death.

SIR JAMES OUTRAM seconded the Motion.

SIR CHARLES JACKSON said, he thought that a case had hardly been made out for the suspension of the Standing Orders, with a view to this Bill being passed through all its subsequent stages. The Bill had been considerably altered, and it appeared to him that the better course would be to refer it to a Select Committee, with instructions to report thereon within a week.

THE VICE-PRESIDENT said, it appeared to him that there was some little difficulty about this Bill. It was

a private Bill by which the Legislature was about to settle property, among which was Mazagon Castle. The Preamble stated, among other matters, that—

"Whereas the said Sir Jamsetjee Jejeebhoy was seised of a Mansion-house and hereditaments situate in the Island of Bombay, called Mazagon Castle, and had an absolute estate of inheritance therein, and was desirous, in fulfilment of the aforesaid engagements, of settling Promissory Notes of the Government of India, producing an annual income of one lakh of Rupees, and the said Mansion-house and hereditaments to the uses, upon the trusts and for the purposes hereinafter limited and declared, concerning the same respectively.

"And whereas the said Sir Jamsetjee Jejeebhoy was also desirous that the heirs male of his body, to whom the said title and dignity of Baronet should descend, should take and bear the names of 'Jamsetjee Jejeebhoy' in lieu of any other name or names whatever, which they respectively might bear at the time of such descent on them respectively; and he was also desirous that the Revenue Commissioner for the Northern Division of the Presidency of Bombay, the Accountant General, and the Sub-Treasurer at Bombay for the time being, should be trustees of the aforesaid Promissory Notes, and be likewise the trustees for carrying into execution the general purposes and powers of this Act, with relation to the same securities, and also with relation to the said Mansion-house and hereditaments.

"And whereas the said Sir Jamsetjee Jejeebhoy departed this life on the 14th of April 1859, before the aforesaid engagement with Her Majesty's Government was carried out on his part, and by his Will dated the 9th of April 1853, duly signed and executed by him, gave and devised the residue of the estate, houses, lands, securities, moneys, and effects, to and amongst his sons Cursetjee Jamsetjee, Rustomjee Jamsetjee, and Sorabjee Jamsetjee."

With reference to the words "residue of the property," he asked how could the Council know what would be comprised under those words? It was necessary, when recitals of this nature were inserted, that the facts should be correctly ascertained. In England such a Bill would not be passed without proof of the correctness of the Preamble.

This Bill varied considerably from the original Bill, which had been withdrawn. According to the original Bill, the late Baronet and his representatives would have had ultimate appointment of the trust fund, whereas this Bill gave it to the present Baronet and his representatives. In case of failure of the Baronetcy, a question might arise whether this Council had not appropriated the ultimate residue in a different manner from that intended by the late Baronet. The Council was entirely in the dark as to the contents of the Will. He (the Vice-President) did not mean to say that the property had been otherwise disposed of, but still it was necessary that they should see the Will, and that the Bill should be published to the world, so as to allow those who might have any objections to make to it, the opportunity of submitting them.

For these reasons it appeared to him that the Standing Orders should not be suspended, but that the Bill should be proceeded with in the usual course. There might have been some necessity for hurrying on the Bill during the lifetime of the late Baronet, but he did not think that the same necessity existed for doing so now.

The Council divided—

Ayes 3.	*Noes* 4.
Mr. LeGeyt.	Mr. Sconce.
Mr. Harington.	Sir Charles Jackson.
Sir James Outram.	Mr. Forbes.
	The Vice-President.

So the Motion was negatived.

ACQUISITION OF LAND FOR PUBLIC PURPOSES.

MR. SCONCE said, before moving the second reading of the Bill "to amend Act VI of 1857 (for the acquisition of land for public purposes)," there was one important point which he desired to notice. The principle of the Bill was that, after the measurement of the land required for Railway or other purposes had been completed, a reasonable period, say ten days, was allowed for further adjustment, after which period the land might at once be taken possession of for the purpose to which it was proposed to be applied. He thought it necessary, however, in the event of the Bill being allowed to be read a second time and referred to a Select Committee, to introduce a Clause corresponding with a Clause in the present Act, which provided that, on the land being taken possession of, when the question of compensation was referred to

arbitrators, interest should be paid from the date that the land was taken. Accordingly, it was his purpose to propose that, on the land being taken possession of as provided in the present Bill, the owner should be entitled to interest at the rate of six per cent. per annum from the time when possession was taken to the time of payment.

SIR CHARLES JACKSON said, it was quiet clear from the amendment now proposed by the Honorable Mover, that he saw the objection to which the Bill was open. The Bill, as it now stood, did not direct the Collector to give any notice to, or attempt to make any arrangement with, the owner, but immediately after the measurement was completed, Government were authorized to take possession, and thereafter be sole owners of the land. That was contrary to the principle of all English Acts. According to the Lands Consolidation Act, notice was to be given, and payment or a deposit of the purchase money was required to be made before any entry on the land. Now, in this case, this was entirely dispensed with, and the reason given for dispensing with it was that land was urgently required for Railway purposes, and that great delay took place in obtaining possession. It appeared to him that the delay was owing to a misconstruction of Act VI of 1857. That Act never contemplated a detailed measurement of the land showing every tree upon it, such as had become customary now, but only a measurement of the quantity sufficient to show what was the land required to be taken.

He would read an extract of a Despatch from the Court of Directors on this subject, under date the 13th August 1856. The Court of Directors said:—

> "We agree with you that, when individuals are required to relinquish their land for purposes of public convenience, they may reasonably expect to be liberally dealt with, and we much prefer that such arrangements should be amicably settled between the Revenue Officers and the parties concerned. It is only when exorbitant terms are insisted on that the provisions of the Act XX of 1852 should be resorted to."

There was great objection in principle to allowing Government to take possession of land without paying for it, or, in case of dispute, depositing the purchase money. If that were allowed, all inducement was taken away for expediting the settlement of the claims with the owners, and what would be the position of the owner in the meantime? Supposing he depended entirely for support upon his land, what would he live upon during the time his claim was not settled? A similar objection would appear to have occurred to the Honorable Member for Bengal, for he now proposed to provide for the payment of interest, but it was poor compensation to a man deprived of his land, and, perhaps, of his subsistence, to tell him that eventually he would get interest for it.

THE VICE-PRESIDENT said, he thought that the Legislature went quite far enough in passing Act VI of 1857. Under that Act, when the Collector had made an award or *directed a reference to arbitration*, immediate possession of the land might be taken. It did appear very hard, and was certainly going far beyond the English Act, to take possession of another man's property, unless the money was first paid or deposited, or at least before matters were put into train towards adjustment.

He agreed with the Honorable and learned Judge, that the term "measured" in Act VI of 1857 did not mean a detailed measurement. It appeared to him that there was no great difficulty in marking out or measuring the land. He was not in favor of anything that could cause undue delay, but if Government were allowed to take possession of land as proposed by the Bill, delay might ensue before owners received the amount of their purchase money. The Honorable Member for Bengal had given no account of the length of time which, under the former law, elapsed between the taking of land and the payment of the money. In Howrah he was informed that cases had happened, in which persons had been obliged to wait so long as two or three and in one case even five years. He (the Vice-President) thought it unreasonable to ask that land should be taken by Government before the money was paid or deposited, or matters put into train for the purpose.

MR. HARINGTON said, he had quite overlooked that this Bill was entered in the Notice Paper to be read a second time to-day, and having had much other business to attend to, he was obliged to confess that he had not read it. If the Honorable Mover would not object, he (Mr. Harington) should be glad to have a little more time to consider the subject, and he therefore proposed that the further consideration of the Bill be postponed till Saturday next.

The further consideration of the Bill was postponed accordingly.

CRIMINAL PROCEDURE.

The Order of the Day being read for the adjourned Committee of the whole Council on the Bill "for simplifying the Procedure of the Courts of Criminal Judicature not established by Royal Charter," the Council resolved itself into a Committee for the further consideration of the Bill.

Section 85 was passed after an amendment.

Section 87 provided as follows :—

"In all cases, in submitting his proceedings to the Magistrate, the Head Officer of a Police Station shall forward the statement of the person complaining and the substance of the information obtained from the witnesses as reduced to writing, with a brief report of the names of the parties, the nature of the complaint, and the names of the witnesses, without any expression of opinion as to the guilt of the accused, together with any weapon or property which it may be necessary to produce before the Magistrate. The Officer shall state in his report whether he has forwarded the accused in custody, or released him on bail, or on his own recognizance."

MR. SCONCE said, he had given notice of an amendment in this Section, by which he proposed, as nearly as possible, to accommodate it to the changes which had been made in the preceding Sections. As this Section now stood, the Head Officer was required, in forwarding the statement of the complainant, to send in the substance of the information obtained from the witnesses as reduced to writing. But as the Council had already determined to dispense with a record by Police Officers of statements made to them by witnesses, some alteration was clearly necessary.

He also proposed to make another slight verbal alteration in the Section, which, as it stood, seemed to him to give some encouragement to the Police to delay submitting the statement of the complainant to the Magistrate. He considered it important that the Police should be required to transmit the ground of their investigation without delay to the Magistrate, and for this purpose the first sentence of the present Clause was slightly modified. He proposed also to add a new sentence to the beginning of the Clause, with the object of indicating to the Police the sort of record which it was expedient that they should keep up, in order to exhibit the course of their proceedings. He had also added three lines at the close of the Section, requiring the Police, in the event of the accused being released on bail, or on his own recognizance, to mention the date on which the accused was required to appear before the Magistrate.

With these remarks, he begged to move the omission of this Section, and the substitution of the following :—

"In all cases the Head Officer of the Police shall, day by day, record his proceedings by way of Diary, setting forth the time at which the complaint or other information reached him, the time at which he began and closed his enquiry, the place or places visited by him, and a brief statement of the circumstances elicited by his investigation. During the progress of, or at the completion of an enquiry, the Head Officer of Police shall forward to the Magistrate the statement of the complainant, or other information, and shall set forth in a report the names of the parties, the nature of the offence, and a list of the witnesses bound over to appear, together with a brief indication of the points to which the evidence of each relates; and he shall also transmit any weapon or property which it may be necessary to produce before the Magistrate. The Officer shall state in his report whether he has forwarded the accused in custody; and if he has released the accused on bail, or on his own recognizance, shall mention the date on which the accused was required to appear before the Magistrate."

MR. HARINGTON said, he had no particular objection to make to the proposed amendment, but he preferred the Section as it stood. He saw no very great difference between it and the proposed amendment. The former provided that "the substance of the

information obtained from the witnesses as reduced to writing" should be forwarded to the Magistrate, and the latter proposed the substitution for those words of the words "a brief indication of the points to which the evidence of each witness relates." He desired to know the precise meaning of the word "indication," and what it was intended to comprise.

After some further discussion, the question to omit Section 87 was put and negatived.

MR. SCONCE then moved the introduction of the following as a new Section after Section 86:—

"In all cases the Head or other Officer of the Police shall, day by day, record his proceedings by way of Diary, setting forth the time at which the complaint or other information reached him, the time at which he began and closed his enquiry, the place or places visited by him, and a brief statement of the circumstances elicited by his investigation."

Agreed to.

MR. HARINGTON, moved the addition of the following words to the above Section:—

"And shall forward day by day a copy of such record to the Magistrate."

After some discussion the Council divided:—

Ayes 4.	*Noes* 3.
Mr. Forbes.	Mr. Sconce.
Mr. LeGeyt.	Sir Charles Jackson.
Mr. Harington.	The Chairman.
Sir James Outram.	

So the Motion was carried, and the Section as amended then passed.

SIR CHARLES JACKSON moved that the words "and the substance of the information obtained from the witnesses as reduced to writing" be omitted from Section 87.

MR. HARINGTON said, it appeared to him that Honorable Members, in proposing that the Police should not be allowed to send in any thing in writing, labored under the great mistake of supposing that the Thannah record, instead of being in any way a protection to an accused party, must necessarily prove injurious to him. Now his own experience was quite the other way, and he believed that, if the Thannah record was done away with, or not allowed to be seen by the Court trying the case, it would be most injurious to the interests of justice. He was confirmed in this view by a letter which he had received only yesterday morning from one of the Judges of the Sudder Court at Calcutta, Mr. Samuells, who, as was well known, was a practical man and a very able and experienced Judge. This letter he would venture to read to the Council.

SIR CHARLES JACKSON rose to order. He doubted whether it was strictly in order to read a letter from a private person. It appeared to him that the Standing Orders required communications from such persons to be addressed to the Council by petition.

MR. HARINGTON said, he believed he was not out of order. It would be in the recollection of the Council that, on the occasion of an Honorable Member (Mr. Ricketts) who was now absent taking his seat in this Council, that Honorable Member read a private letter which he had received from an Officer under the Punjab Government without any objection being made. He believed also that, during the Debates which took place last year on the Alluvial Lands Bill, a private letter from Mr. Samuells was read to the Council. He mentioned these instances to show that he had precedents for the course which he was about to have taken. He would observe further, that he believed it was fully competent to any Honorable Member to mention the substance of any private letter which he might receive bearing on any subject before the Council, and it appeared therefore to him that there could be no valid objection to the letter being read *in extenso*. He need scarcely say that Mr. Samuells might easily have put the letter which he had addressed to him into an official form, and sent it through his Government to the Clerk of the Council, in which case it would have been open to him (Mr. Harington) to have moved that it be printed.

The CHAIRMAN said, it appeared to him that the Honorable Member was not out of order. It was very desirable that the Council should have the benefit of the opinions of practical persons, and

he certainly thought that the opinion of a gentleman of Mr. Samuells's experience should be read.

MR. HARINGTON then proceeded to read Mr. Samuells's letter, which was as follows :—

"I do not know whether the forms of the Council admit of the re-consideration of Clauses adopted at a second reading, but if so, I do think that there should be some further consideration of Section 82 and the various Sections of 83, and I for one should be happy to memorialize the Council about them if I thought it would do any good. Section 82 simply relieves the Police of responsibility. Hitherto they have been obliged to make a note of the evidence in presence of witnesses, and to send it in immediately. It is placed on the record, and they are responsible for its correctness. It has never been regarded as evidence, but has been valuable as enabling the Judge to check the evidence of the witnesses in Court. Now the Police will give verbal evidence of the witnesses' statements, and will refresh their memories by looking at notes which they will say they took at the time. The only remedy for the evils this will give rise to will be for the Superintendents of Police to direct the Police to send in their notes of evidence as hitherto for the Magistrate's private information. Still, as the Magistrate cannot place them on record, the Judge will be deprived of the check they have hitherto afforded him. The majority of the Council evidently are not aware that the great object in Indian Police investigations is to record the statements of all parties immediately, and to have them laid before the Magistrate at once, so as to prevent as much as possible all tampering and collusion. Then with regard to Section 83, there is first the obvious objection that it has no business in a Code of Procedure. If the Law of Evidence requires amendment, surely this amendment, and such an important amendment, ought not to be made in a Procedure Bill. But there is the still graver objection, that the alteration is a retrograde one. The tendency of legislation of late years has been to open out the channels through which evidence may flow into the Courts as widely as possible, leaving the Court to judge of its value. But here, because it is not always trustworthy, and is apt to be procured by improper means, you shut out altogether that evidence which, when genuine, is the very best. To be consistent, you must now exclude all native testimony, because natives frequently perjure themselves, and false evidence is procurable in all bazaars. What is meant by 83*d*, and the facts the Police are permitted to depose to, I do not understand, and I am sure no Magistrate will, but the effect of 83*c*, if it is to be read without qualification, will be that numerous heinous crimes will escape conviction, for certainly for one extorted confession you have in this country twenty voluntary ones, and without these voluntary confessions conviction would often be impossible."

In corroboration of what Mr. Samuells had stated, he would go back to the Code of Civil Procedure, and refer to what the Council had done in it. There they had given the Judge large powers to send for papers, or, in fact, do any thing which appeared likely to lead to a correct decision of the case, and thereby to promote the ends of justice; and there was a still greater necessity for this in Criminal matters. He felt convinced that, instead of giving protection to life and property by doing away with the Thannah record, they would be doing just the contrary.

It certainly seemed to him that the words proposed by the Select Committee, and which did not go so far as the words used by Her Majesty's Commissioners, were good in themselves, and were preferable to the words suggested by the Honorable Member for Bengal. He should oppose the Motion.

After some further discussion, the Council divided—

Ayes 4.	*Noes* 3.
Mr. Sconce.	Mr. Forbes.
Sir Charles Jackson.	Mr. Harington.
Mr. LeGeyt.	Sir James Outram.
The Chairman.	

So the Motion was carried.

THE CHAIRMAN moved the insertion of the words "or other" before the words "Officer of a Police Station" in the beginning of the Section.

The Motion was carried, and the Section as amended was then passed.

Section 109 was passed as it stood.

Section 110 provided as follows :—

"If the Magistrate see cause to distrust the truth of the complaint, he may postpone the issuing of process for causing the attendance of the accused, and direct a previous enquiry to be made into the complaint, either by means of the local Police Officers, or in such other mode as he shall judge most proper, for the purpose of ascertaining the truth or falsehood of the complainant's allegations. If the result of the enquiry shall lead the Magistrate to believe that the charge is well founded, and the offence is of the nature described in Section 109, he shall issue his warrant or summons as therein directed; provided that nothing herein contained shall prevent the Magistrate from at once dismissing the complaint, if in his judgment there be no sufficient ground for proceeding with it."

MR. SCONCE, in drawing attention to the words "or in such other mode

as he shall judge most proper," said that these words were taken, he believed, from the existing law. But he thought that they were scarcely consistent with the present Code. He had no objection that the investigation which they seemed to sanction should be described, but if that was impracticable, in so far as they meant any indirect course of action, the words would be better left out, and he should therefore move for their omission

MR LEGEYT asked, if the words "by means of the local Police Officers" also were quite consistent with the provisions of this Code. He doubted whether the rural or local Police, by whom he understood Village Chowkeydars, were proper persons to make an enquiry of the kind contemplated. The Magistrate would have persons in his Cutcherry, whom he could entrust with the duty, instead of sending a Thannahdar or a Village Chowkeydar, by which means a wide door would be open to those abuses which the Council was striving to avoid He would rather omit this Section altogether, and leave it to the discretion of the Magistrate to adopt whatever measures he considered most proper for the purpose of satisfying himself as to the truth of a complaint before issuing process for causing the attendance of the accused

THE CHAIRMAN moved the insertion of the words "of his Assistant, or of any Deputy Magistrate or" after the words "by means" and before the words "of the local Police Officers"

MR LEGEYT said, surely the insertion of those words would commit the Council to a continuation of the present union of Judicial and Police functions It would be giving by law direct authority to a Magistrate to depute his Deputy or Assistant to perform the duty of an Executive Police Officer He conceived the duty here indicated was especially that of the superior Executive Police, and should be performed under their orders by such persons as they might deem best fitted for the duty.

MR HARINGTON said, the Honorable Member for Bombay seemed to be proceeding on the assumption that there was a Bill before the Council to separate the Judicial from the Police functions of the Magistrate. But no such Bill had been introduced, nor had any Honorable Member given notice of his intention to bring in such a Bill. The Bill relating to the Madras Police certainly, as originally framed, proposed to effect this separation, but that Bill had since undergone considerable alteration, in consequence of a communication received from the Madras Government, which would leave the Magistrate to exercise all his present Police as well as Judicial functions, with the aid of the new Police Force to be raised under the Bill. What the Council had to deal with was the system now in force, and to fit the Code of Procedure to the existing Courts. Hereafter, in the event of a new system being introduced, or of new Courts being constituted, requiring a different Procedure, the necessary alterations could be made. "Sufficient for the day was the evil thereof"

As regarded the amendment proposed by the Honorable Member for Bengal, he (Mr Harington) was willing to meet that Honorable Member's objection by the insertion of the words "not inconsistent with the provisions of this Code." But he should certainly oppose the omission of the words referred to by the Honorable Member, taken as they had been from a law which had been in force for upwards of thirty years, and which so far as he was aware had never given rise to any improper practice, or been found open to doubt or mis-construction.

THE CHAIRMAN said, he did not quite understand the force of the objection taken to his amendment by the Honorable Member for Bombay The Honorable Member had said that the adoption of that amendment would commit the Council to a continuation of the existing union of Judicial and Police functions He (the Chairman), however, did not think that this was a Police duty. The Section provided that—

"If the Magistrate see cause to distrust the truth of the complaint, he may postpone the issuing of process for causing the attendance of the accused, and direct a previous enquiry to be made into the complaint, either by means of the local Police Officers, or in such other mode as he shall judge most proper, for the purpose of ascertaining the truth or falsehood of the complainant's allegations."

If the Magistrate had reason to doubt the correctness of the complaint, he might go himself and enquire into the matter; and if he could not go himself, what objection was there to his sending his Assistant or Deputy; or if he could not spare his Assistant or Deputy, why could he not send any of his local Officers? It was only to satisfy some doubt which had arisen in his own mind that he might wish to depute an Officer to make the enquiry, or probably he might require the Officer at the next Thannah, to do so. He should, therefore, press his amendment.

THE CHAIRMAN'S Motion was then put and carried.

MR. SCONCE'S motion to omit the Section was put and negatived, and the Section, after a further amendment on the motion of THE CHAIRMAN, was then passed.

Sections 111 to 114 were passed as they stood.

Section 115 was passed after a verbal amendment.

Sections 116 to 123 were passed as they stood.

Section 124 was passed after an amendment.

Sections 125 to 134 were passed as they stood.

Section 135 was passed after an amendment.

Sections 136 to 153 were passed as they stood.

MR. HARINGTON moved the introduction of the following as a new Section after Section 153 :—

"Prosecutors and witnesses for the prosecution, whose attendance may be necessary before the Court of Session, shall execute recognizances before the Magistrate to be in attendance when called upon at the Court of Session (to prosecute or to give evidence as the case may be). If any prosecutor or witness shall refuse to attend before the Court of Session, or to execute the recognizance above directed, it shall be competent to the Magistrate to detain such prosecutor or witness in custody, until he shall execute such recognizance, or until the time when his attendance at the Court of Session is required, when the Magistrate shall forward such prosecutor or witness under custody to the Court of Session."

Agreed to.

Sections 154 to 159 were passed as they stood.

The consideration of Section 160 was postponed.

Sections 161 to 163 were passed as they stood.

The consideration of Section 164 was postponed.

Sections 165 to 228 were passed as they stood.

Chapter XVIII Section 229 provided as follows :—

"Criminal trials before the Court of Session shall ordinarily be by Jury. But if a Court of Session shall consist of three Judges, Criminal trials may be held before a Court so constituted without a Jury. The judgment of the Court in trials so held shall be according to the opinion of the majority. Trials by Jury may be held before a single Judge of a Court of Session."

MR. SCONCE said, he felt great difficulty in agreeing to the whole of this Chapter as it now stood. The first Section declared that "Criminal trials before the Court of Session shall ordinarily be by Jury." A later Section provided that the Jury should consist of not less than three or more than nine persons. The Chapter then proceeded to provide—

"If the Jury are unanimous in a verdict of guilty, or if a majority of the Jury find a verdict of guilty, and the Judge concur in such finding, the accused shall be convicted. In default of such unanimity, or of such majority with the concurrence of the Judge, the accused shall be acquitted."

In the first place, he thought it was impossible that nine eligible persons could at all times be had to form a Jury. In the next place, it appeared to him that a body of three men was altogether opposed to the English idea of the constitution of a Jury. Then, again, he was not prepared to allow two or even three men to neutralize the voice of the Judge. He did not think that the verdict of three Jurors, such as would ordinarily sit, should be taken to have the same force as the opinion of an educated Judge. He proposed therefore that this Section should commence as follows :—

"Criminal trials before the Court of Session shall ordinarily be by Assessors or by Jury."

MR. HARINGTON said, he found a difficulty in dealing with the amend-

ment proposed by the Honorable Member for Bengal, because it did not disclose the mode of procedure to be observed when Assessors were employed instead of a Jury, how they were to act, and what weight was to be given to their opinion. The revision of this Chapter had proved a very difficult task to the Select Committee. Their wish was to constitute a Court of Session, to consist of three Judges, for the trial of all cases beyond the competency of the Magistrate to dispose of. It seemed to the Committee that a Court so constituted, being in fact a Jury of Judges, all of whom would be Officers of considerable standing and experience, might safely be left to deal finally with all questions of fact, and to dispose of them without an appeal. But although the Bill might provide for the establishment of Courts of Session composed as he had just mentioned, the Government might object to the expense, and say that they could not furnish the number of Judges; and, therefore, the Bill made provision for the trial of cases requiring to be committed to the Court of Sessions by a single Judge, with the aid of a Jury. The number of Jurors was not fixed absolutely at three, but as there might often be very great difficulty in getting a larger number, it was proposed that the Jury should consist of not less than three, or more than nine. Individually he had no objection to a Jury of twelve if that was considered the correct number, but in practice he thought that it would be most inconvenient to declare that the Jury must always consist of five, or nine, or twelve members.

In the objections taken by the Honorable Member for Bengal to the force proposed to be given to the verdict of the Jury, he appeared to have overlooked the concluding Sections of the Chapter, according to which, if the Judge thought a verdict of guilty contrary to, or not warranted by, the evidence, though he might be bound to accept it, he could apply to the Government for a pardon or a remission of the punishment awarded, which he believed was what was done at home under similar circumstances; or if he thought a verdict of acquittal improper, he could refer his proceedings to the Sudder Court, who would be competent to pass such orders in the case as it might deem just. He was very sensible that objections might be taken to the very large power thus proposed to be given to the Sudder Court, and it might be considered wrong in principle that the Court should have that power; but this was what was done at Madras, and there was a difficulty in making any other provision without giving a degree of power to Native Jurors, with which, for the present at least, it was thought that they could not be safely entrusted.

MR. FORBES said, the Honorable Member for Bengal had stated his objections to this Chapter, but had proposed no amendments to meet those objections. The question of trial by Jury was a most important one; a more important question, he thought, could scarcely be entertained by the Council. He should therefore propose that the further consideration of this Chapter be postponed; and if the Honorable Member for Bengal would give notice of his amendments, with a view to their being printed and circulated for the information of the Council, Honorable Members would come prepared to discuss the proposed amendments on the next occasion of the Committee sitting on this Bill.

The further consideration of the Chapter, comprising Sections 229 to 236, was postponed.

Sections 237 to 242 were passed as they stood

Section 243 was passed after amendments.

Sections 244 to 248 were passed as they stood.

Section 249 provided as follows:—

"When the case for the prosecution has been brought to a close, the accused person shall be called upon to enter upon his defence, and to produce his evidence. The Court may put such questions to the accused as it may think proper."

SIR CHARLES JACKSON, adverting to the concluding sentence of this Section, asked if the Council were prepared to admit the new principle of the Judge examining an accused person. Now that the Supreme and Sudder Courts were shortly to be amalgamated, he thought that an important principle of this nature should be considered with

reference to the Supreme Courts. The question was nothing more or less than the adoption of the French system, and from what he had seen of that system, he must say that the tendency of it would be to make the Judge a prosecutor. He (Sir Charles Jackson) desired to see an English Judge maintain the high and impartial position which he now held, and which was to hear the evidence on both sides, and to sum up and decide fairly between man and man. As the Section now stood, however, the Judge would be required to exercise his ingenuity in convicting the accused, and he would have the same interest in a case pending before him as a Judge which a Public Prosecutor might be expected to have.

MR. HARINGTON said, the object of the provision to which the Honorable and learned Judge objected was simply to promote the ends of justice, and that he thought was a sufficient ground for its introduction. He entirely agreed with the Honorable and learned Judge that the French system, under which the Court and the Public Prosecutor did all they could by cross-examining the prisoner to entrap him into a confession, or to elicit some information which might be used against him, was most objectionable, but he trusted that such would never be the practice here.

THE CHAIRMAN said, he was not one of those who thought that a person should not be bound to criminate himself. He would have no objection to give to the Supreme Courts the power of examining an accused person.

MR. SCONCE suggested the addition of words giving the accused the option of declining to answer.

The further consideration of the Section was then postponed.

Sections 250 to 254 were passed as they stood.

Section 255 provided as follows :—

"If the case is one in which, if the defendant be convicted, he is liable to sentence of death, the Court of Session shall record the conviction and refer the case to the Sudder Court, with a statement in writing of its opinion as to the sentence which should be passed upon the accused, with the reasons for such opinion; and in cases tried by Jury, the Court of Session shall report the substance of its direction to the Jury."

SIR CHARLES JACKSON asked, what the last part of this Section meant, namely, "the Court of Session shall report the substance of its direction to the Jury." The practice was for the Judge to sum up to the Jury, immediately after the case was closed. Was it intended that he should write out his direction to the Jury before it was delivered? If not, he thought any statement afterwards written would convey a very inadequate idea of what was really said to the Jury.

THE CHAIRMAN said, he would rather let the Judge pass sentence at once upon the accused, provided that, if sentence of death were passed, it should not be carried into effect until after confirmation by the Sudder Court. It was very important, by way of example, that the by-standers should know what became of the accused. He should move the omission of all the words commencing with "record the sentence" and the substitution of the following words :—

"Pass sentence, and if sentence of death be passed, it shall not be executed without the confirmation of the Sudder Court. In any case submitted to the Sudder Court for confirmation of the sentence, the Court may either confirm the sentence, or pass any other sentence warranted by law."

MR. HARINGTON said, the effect of the proposed amendment would be to enhance the severity of the punishment. It would often be a very long time before the sentence was confirmed, and the suspense would add greatly to the penalty.

After some further discussion, the further consideration of the Section was postponed.

Section 256 was passed as it stood.

The further consideration of the Bill was postponed on the Motion of Sir James Outram.

STANDING ORDERS.

MR. HARINGTON postponed the Motion (which stood in the Orders of the Day) for the adoption of the Report of the Select Committee on the Message from the Governor-General in Council calling for a report on the practical working of the Standing Rules and Orders of the Legislative Council.

FOREIGNERS.

MR. HARINGTON moved that the Bill "to continue in force for a further period of two years Act XXXIII of 1857 (to make further provision relating to Foreigners)" be referred to a Select Committee consisting of Sir James Outram, Sir Charles Jackson, and the Mover.

Agreed to.

JAMSETJEE JEJEEBHOY BARONETCY.

MR. LEGEYT moved that the Bill "for settling Promissory Notes of the Government of India, producing an annual income of one lakh of Rupees, and a Mansion-house and hereditaments called Mazagon Castle, in the Island of Bombay, late the property of Sir Jamsetjee Jejeebhoy, Baronet, deceased, so as to accompany and support the title and dignity of a Baronet lately conferred on him and the heirs male of his body by Her present Majesty Queen Victoria, and for other purposes connected therewith," be referred to a Select Committee consisting of the Vice-President, Sir James Outram, Sir Charles Jackson, and the Mover.

Agreed to.

PUBLIC CONVEYANCES

MR. FORBES moved that a communication received by him from the Madras Government be laid upon the table and referred to a Select Committee on the Bill "for regulating Public Conveyances in the Towns of Calcutta, Madras, and Bombay, and the several stations of the Settlement of Prince of Wales' Island, Singapore, and Malacca."

Agreed to.

RAILWAY CONTRACTORS AND WORKMEN.

MR. FORBES moved that a communication received by him from the Madras Government be laid upon the table and referred to the Select Committee on the Bill "to empower Magistrates to decide certain disputes between contractors and workmen engaged in Railway and other works."

Agreed to.

The Council adjourned.

Saturday, August 20, 1859.

PRESENT:

The Hon'ble Sir Barnes Peacock, *Vice-President*, in the Chair.

Hon. Lieut.-Genl. Sir James Outram,	H. Forbes, Esq.,
Hon. H. B. Harington,	Hon. Sir C. R. M. Jackson,
P. W. LeGeyt, Esq.,	and
	A. Sconce, Esq.

CRIMINAL PROCEDURE.

THE CLERK presented to the Council a Petition from certain Members of the Central Committee of the Indigo Planters' Association against the provisions of Section XX of the Bill "for simplifying the Procedure of the Courts of Criminal Judicature not established by Royal Charter" as amended in Committee of the whole Council, and praying for the re-publication of the Bill.

SIR CHARLES JACKSON moved that the Petition be printed.

Agreed to.

MALABAR OUTRAGES.

MR. FORBES presented the Report of the Select Committee on the Bill "for the suppression of Outrages in the District of Malabar in the Presidency of Fort St. George."

NATIVE PASSENGER VESSELS (BAY OF BENGAL).

MR. FORBES moved the first reading of a Bill "to prevent the over-crowding of vessels carrying Native Passengers in the Bay of Bengal." He said he should not detain the Council long in introducing the Bill, of which he had given notice, for the continuance of the provisions of Act I of 1857, a law passed to prevent the over-crowding of vessels carrying passengers in the Bay of Bengal. The original Bill was introduced by Mr. Eliott in 1856, and became law early in 1857, and its operation was limited to three years at the instance of the Marine authorities at Madras, who thought it probable that some error or oversight might, in the course of time, become apparent in a law passed in a matter

to which legislation in India was new, and that the experience had in the three years to which the operation of the law was limited, might show that, in some points, it might be possible to make its provisions more efficacious.

These anticipations had proved correct, and the Bill which he should immediately present to the Council had one or two provisions which were not to be found in the law now in force, but which experience had shown to be very necessary for the protection of those for whose protection the original Act was passed.

The Council might perhaps remember that in November of last year some papers were presented to them by the Government of India, which showed that, although Act I of 1857 had put an end to over-crowding in vessels clearing out from British Ports in the Presidency of Madras, the evils which it was enacted to prevent still prevailed in the case of vessels clearing from Foreign European Ports, and from Ports in the Presidency of Bengal; and in the cases that were referred to in the correspondence, as many as one hundred and eighty-nine passengers arrived at Moulmein in a vessel of only seventy-eight tons burden, which had cleared out from the French Port of Karical, and as many as three hundred and twenty arrived at Rangoon from Chittagong in a vessel of only one hundred tons burden. In the one case the proportion was two and a half persons to each ton, and in the other three and one-fifth, while the law allowed of no more than one person to each ton in a licensed vessel, and one to four tons in a vessel that was unlicensed.

To meet this evil it was proposed in the Bill about to be presented to the Council that the law should be as applicable to vessels arriving at any British Port, as it at present was to those leaving a British Port, following in this respect the precedent of Section XIX of Act XXI of 1858, and to extend the law to Chittagong and the Ports in Orissa. On this subject he had consulted the Honorable Member for Bengal, and he was able to say that the proposed extension of the law had his full concurrence.

They had further learned by experience that Native Passengers required the protection of the law quite as much in returning to India from the Eastern Settlements, as they did in proceeding to the Eastern Settlements from India, and in one respect even more so, for while the Masters of vessels had always so far kept faith with their Passengers proceeding to the Eastward as to convey them to the Port to which they might have contracted to convey them, in returning it had not been unusual for the Master to land his Passengers at any Port that might be convenient to himself, without reference to the convenience of the Passengers themselves.

It is proposed to meet this evil by attaching a penalty to the act of landing a Passenger at any Port other than that to which he had contracted to be taken, allowance being made for stress of weather or other unavoidable hindrance.

The only other additions which he proposed to make to the present law were to incorporate Sections XXVIII, XXIX, XXX, XXXII, and XXXIII, of Act XXI of 1858. Section XXVIII reserved to Passengers their right of action. Section XXIX provided that offences should be summarily punished by a Magistrate, and made legal the levy, by distress, of any penalty that might be unpaid by the Master or Owner. Section XXX provided that for the purpose of adjudicating penalties any offence should be deemed to have been committed within the jurisdiction of the Magistrate of the place where the offender was found. Section XXXII enabled the Magistrate to give compensation to any party who might have suffered wrong or damage, from the amount of any penalty that might be adjudged; and Section XXXIII was one of interpretation. It had appeared to him that all of these provisions were as much needed in the case of Passengers proceeding across the Bay of Bengal as in the case of those who proceeded from the Western Coast of India to the Red Sea or the Persian Gulf.

The Bill was read a first time.

ARMS AND AMMUNITION.

MR. HARINGTON said, in introducing on that day fortnight a Bill to make perpetual Act No. XXVIII of

1857, which would have expired in the course of a few days, but that the Council, on the day just mentioned, had been pleased to extend its operation, originally limited to two years, from the 11th September 1857 to the last day of the current year, he stated that, although the Act in question was passed at the time that the late Mutiny in the Native Army of Bengal, and the Rebellion which followed thereon in some parts of the country, were at their height, and, like some of the Special Acts passed about the same period, and which, no doubt, grew out of the circumstances of the times, a temporary character was assigned to it also, the Government, for some years previously, had had under its consideration the expediency of introducing a law for the purpose of disarming the population throughout the country, as calculated materially to repress crimes attended with violence, and generally to contribute to the maintenance of the public peace. He pointed out that in the Punjaub a general disarmament of the population had been carried into effect with the best results, and that to this circumstance had been attributed, in no small degree, the remarkable tranquillity which prevailed throughout the Territory at the very time that the greater part of the North-Western Provinces was in a state of anarchy; and he observed that, although it was quite right and proper that most of the Special Acts passed in 1857 should not be allowed to remain in force a day longer than was absolutely necessary, in reference to the circumstances which had called them into existence, Act XXVIII of 1857 was of a different character, and that there were obvious and cogent reasons for its continuing in the Statute Book, and for its becoming one of the permanent laws of the country. To these remarks he had little to add on this occasion, but he might mention that a communication had lately been received from the Lieutenant-Governor of the North-Western Provinces, in which His Honor strongly recommended that the Act should be made permanent. He wished, at the same time, to take advantage of the present opportunity to say a few words by way of explanation in respect to a mistake into which he had fallen in the course of the debate which took place on the Motion made by him for suspending the Standing Orders to admit of the Bill being read a second time and proceeding at once through its remaining stages, in replying to a question put by the Honorable and learned Judge opposite (Sir Charles Jackson). Having been asked by the Honorable and learned Judge whether the Bill applied to Europeans, he read an extract from a speech which had been delivered in that Chamber by the late Honorable and learned Chief Justice in one of the debates which took place when Act XXVIII of 1857 was passing through a Committee of the whole Council, in which the Honorable and learned Chief Justice observed that—

"He had seen a complaint that Europeans were to be compelled by the Bill to take out a license to possess arms; whereas the Council well knew that the provisions to that effect had been struck out of the Bill some weeks ago. His object in provoking this discussion was not to move any amendment on the Section as it stood, but to remove a misconception which appeared to exist in some quarters, and which might extend to those whose duty it would be to put the Act in force."

At the time he read this extract, he had not seen the original Bill, and it occurred to him that it must have contained some provisions relating to Europeans which had been afterwards struck out. Hence the mistake into which he fell. The fact of his reading the passage in question, word for word, must have shown that he could have had no intention of misleading the Honorable and learned Judge, or the Council at large, and he felt sure that the Council would acquit him of any such design. He believed, too, he was right in saying that the Honorable and learned Member, after hearing Sir James Colvile's remark, expressed himself as quite satisfied. He now found, on comparing the Act as passed with the original Bill, that the provisions relating to licenses which the late Honorable and learned Chief Justice stated had been struck out, applied alike to Natives and Europeans, those provisions being considered objectionable as regarded both classes. It had also, he observed, been stated that, in the course recently pursued in respect to the continuance of Act XXVIII of 1857, the Government had tried to smuggle the Bill through the

Council, in order that the public might not have an opportunity of expressing any opinion on the subject of the Act. The best answer that he could make to that statement was to refer to what took place immediately he became acquainted with the fact that some Honorable Members were not prepared to give their assent at once to a Bill to make the Act perpetual, and that they required further time for consideration. On the understanding that no objection would be made to the passing of a temporary Act, he at once yielded to the wish for delay, not because he was afraid of being defeated, for to this day he had no idea what the result would have been, had he pressed his motion to a division, but because what he was chiefly anxious for was that the Act, under the operation of which the process of disarming was being vigorously and successfully prosecuted in some districts, while in others it had not yet commenced, should not expire on the day originally fixed for its termination. It never occurred to him that the Bill would be objected to. Nothing had fallen from any Honorable Member, previously to the Meeting, to lead him to suppose that there would be any opposition, but directly that he was informed of the wishes and feelings of some Honorable Members, he willingly acceded to the suggestion which fell from the Chair, and which was quite sufficient for his immediate purpose. He ought perhaps to take blame to himself for not having brought in the Bill before, but he had not the honor of a seat in the Council at the time Act XXVIII of 1857 was passed, and it was not until the receipt of a letter from a Civil Officer in the North-Western Provinces that he became aware of the fact that the Act had only a few days to run, and that it was only by obtaining a suspension of the Standing Orders that he could prevent a cessation of its operation.

With regard to the question whether Act XXVIII of 1857, supposing the Council to agree to make it permanent, should continue generally applicable to all classes as at present, or whether any, and what modifications should be made in the Act in this respect, he deemed it sufficient on this occasion to read what had been said on the subject by the Honorable Mover of the original Bill. He observed :—

"It was a question for consideration whether several further exemptions might not be made; whether any particular class or classes of persons should not be exempted. But to him it appeared that it would be inexpedient to make any special exemption of this nature. He was perfectly satisfied that there were many sections of the community who could be trusted by the Government with the possession of arms, without being subjected to the necessity of taking out licenses. All Europeans, our East Indian brethren, many educated Native Gentlemen, and (he believed he would be supported by the Honorable Member for Bombay in adding) the Parsee gentry and community, might, he was quite sure, be allowed unrestricted possession of arms without any danger to the State. Other sections of the general community might be added. But it appeared to him that, in a measure of legislation like this, it would be difficult to exempt particular classes without appearing invidious and exciting ill-will; and, accordingly, he had made the Bill applicable to all, merely reserving to the Governor-General in Council (by Section VI) the power of exempting from its operation any persons or classes of persons whom he should think fit."

In these remarks he (Mr. Harington) fully concurred, and he could not but think that his fellow-countrymen generally in India would agree with him that, if all Europeans, without distinction, were to be exempted from the operation of the Act, many respectable natives must also be exempted, but if they once embarked on the wide sea of selection, he feared that they would find themselves beset by many and great difficulties, and that it would prove a most perplexing matter to know where to draw the line. He was not prepared to say that class legislation should never be resorted to in this country. Though, to be avoided as a rule, it might sometimes be very right and necessary, but he could not bring himself to believe that the present Bill was one into which it could with any propriety be imported. Act XXVIII of 1857, as finally settled by the Council, was a very guarded Act. Large powers of exemption were vested by it in the Government, and he could scarcely contemplate the possibility of the provisions of the Act being applied to any respectable European, except as regarded the manufacture of certain articles, which, he thought, all would admit was proper,

and the registration of arms, which could put no one to any great inconvenience. If the exception still contended for by some was not considered necessary and proper at the time Act XXVIII of 1857 was passed, *à fortiori*, it could not be considered necessary or proper now. With these remarks he begged to move that the Bill be read a first time.

The Bill was read a first time.

ACQUISITION OF LAND FOR PUBLIC PURPOSES.

On the Order of the Day being read for the adjourned second reading of the Bill "to amend Act VI of 1857 (for the acquisition of land for public purposes)"—

MR. HARINGTON said, the discussion on this Bill having been postponed on the previous Saturday at his request, he would now, with the permission of the Council, proceed to state what had been the result of the consideration which he had given to the Bill in the interim.

If he rightly understood the Bill, the effect of it would not be to place the owners of land required for public purposes in a worse position than that in which they were under the existing law. Were the question at issue between the authorities and the owners of the land, whether the latter had or had not a right to retain possession, notwithstanding that the land was stated to be required for a Railroad, or for a Canal, or for some other public purpose, the case would be different. But this question could never arise. From the moment the land was marked out, the right of ownership virtually passed from the owner to the Railway authorities, or to the Government, as the case might be; it could never be recovered, and the only question that remained for determination was, what was the amount of compensation that should be awarded to the owner for his land? Henceforth, so far as the question of compensation was concerned, it mattered little who was in possession, provided of course that, before the land underwent any change for the purpose for which it was taken, such a plan or drawing of it was made as could be confidently appealed to, and as would indeed supply the place of the land as a matter of evidence in the adjustment of any dispute that might arise. For this the law seemed to make ample provision. Under these circumstances it did not appear that any advantage could result to the owner of the land from retaining possession until the amount of compensation should be fixed; he could not sow the land, he could erect nothing upon it, and he could not let any houses standing upon it; to him, therefore, the land would be barren and useless, and could only be a source of expense in looking after it: whereas it was obviously of great public importance that it should come into the possession of the Railway authorities, or Government Officers, as soon as possible, in order that it might be used by them for the purpose for which it was required. The Honorable and learned Vice-President and the Honorable and learned Judge opposite (Sir Charles Jackson) considered that the price of the land should be at once either paid or placed in deposit; but as the Government or the Railway authorities were the payers, there was obviously no risk of eventual non-payment of any sum awarded as compensation, and if the money were required to be placed in deposit until the amount was fixed, he (Mr. Harington) did not see how that would benefit the owner. So long as the money remained in deposit, he could make no use of it, and it would be just as profitless as the land. It might be quite just and proper to expedite the decision of cases in which any dispute might arise; and when the Bill was in Committee, and he should do his best to get it there by supporting the Motion for the second reading, it might be deserving of consideration whether some provision should not be introduced, requiring the party whose land was taken to state at once at what sum he valued it. If the Railway authorities, or Government, considered the valuation a fair one, they should be bound forthwith to pay the money to the owner; or if any dispute arose as to the right of ownership, it might be certified for decision to the Civil Court.

THE VICE-PRESIDENT said that, although he had no right to address the Council again in this case, he desired to explain, with reference to what had fallen from the Honorable

Member (Mr. Harington), that what he (the Vice-President) meant to say was that, previously to land being taken possession of by Government, either the purchase money should be paid or the matter put into train towards adjustment, so that there might be no delay. In such a case there would be great inducement for a speedier settlement than if Government could enter into possession at once.

SIR CHARLES JACKSON said, he only desired to explain that his objection was that no attempt was made by this Bill to bring about an amicable arrangement between the Government and the owners. He thought it was wrong and contrary to the principle of all English Acts to keep the owner out of his money after his land had been taken away from him. The English Act required that either the payment or deposit of the purchase money should be made before entry on the land.

MR. SCONCE said, it seemed to him, with reference to the remarks of the Honorable and learned Judge on his right, that there was some misapprehension as to the objects with which he had introduced this Bill. Certainly it was farthest from his intention to introduce a Bill that should be calculated to deteriorate the interests of the owners or occupiers of the land required for a public purpose. The grand basis of the Bill, and the principle upon which it was framed, was to prevent delay in carrying on the work after the land was ready to be taken. Substantially a record was prepared which, in all cases, was equivalent to the land itself. It was said that the purposes of the existing law had been materially misunderstood, and that it was sufficient that, as soon as the land was marked out and surveyed by the Railway authorities, the land as thus surveyed should be held to be measured within the meaning of the Act. Now he would remark that, so far as the Bill now introduced was concerned, supposing the above interpretation of the old law to be correct, this Bill would place the owners of the land on a much better footing than the old Act did. According to this Act, notice to the parties interested must issue after the land had been marked out and measured. Well, if, according to the above interpretation of the Act, the survey of the Railway authorities represented the measurement required by Section IV, then this notice would issue on the completion of the survey. But observe the additional advantage given to the parties interested by the present Bill. The Railway survey would be made as before; but that was not held to be sufficient, and further security to the owners and occupiers of the land was afforded by providing that notice should be given of the intention to make a detailed measurement; while, moreover, on the completion of that measurement, a further time was allowed for discussing the details of the measurement. Clearly, therefore, if they accepted the construction of the Honorable and learned Judge as to the course which it was competent to the Railway Commissioner to follow under the Act now in force, the proposals of the present Bill must be held to be entirely in the interest of the public.

It was said also that the Bill did not provide for some arrangement being made with owners prior to taking possession. But the effect of the notice would be to require the owner to state the value of the land. Application could be made to the Deputy Collector, who would always be on the spot, and, in the event of the parties disagreeing, a reference could be made to arbitration. The law could hardly do more than bring the parties together, and when brought together, if they could not agree, to refer the matter to arbitration; and this was the principle adopted in the present Bill.

But even with regard to arbitration, as provided for by the existing law, the principle was the same as that involved in this Bill. Supposing the notices to have been issued, the owner would come and meet the Deputy Collector and make his demand. The Deputy Collector, if he found it to be exaggerated, might decline to accede to it, and this would necessarily lead to a reference to arbitration. Upon the order for a reference to arbitration being made, which might happen at the commencement of the enquiry, possession might immediately be taken. There was no provision as to the time the arbitration should occupy. It might be for a longer, or it might be for a shorter period: and thus in effect the present law embodied a provision which was in

complete accordance with the Bill now before the Council.

Possibly it would be necessary for him to make a few remarks on the subject of dispensing with the detailed measurement now made by the Railway Commissioner, and to which the learned Judge on his right (Sir Charles Jackson) ascribed the delay in assuming possession of the land. In order to prepare a correct assessment of the land to be taken for Government, it was not sufficient to have a statement showing the superficial area of the land, but every thing upon the land must be shown. The number of houses standing, the trees growing, the crops, and whatever other produce might be on the land, should be specified, so as, both for the interests of the owner and of Government, to put on record a specification from which to ascertain the correct value of the land. Now for any such purpose the Railway survey was a blank, and was quite insufficient to furnish data, upon which alone not only the amount of compensation, but the quota due to the several parties interested could be determined.

He had been asked, if he remembered rightly, by the Honorable and learned the Vice-President, why he had not referred to the law that was in operation before the promulgation of Act VI of 1857. Now Section V Act XLII of 1850 provided as follows :—

"Whenever the said Officer shall have recorded his opinion that the land in dispute is needed immediately for the purpose of the public work, he shall be empowered to take immediate possession thereof on behalf of the Government, leaving the amount and distribution of the consideration to be paid for it, if not agreed to by private bargain, to be afterwards ascertained according to the said Regulation, and such possession may be enforced and the obstruction of it punished in like manner as if the land so taken had been sold in execution of the decree of a Civil Court; and all Collectors, Magistrates, and other Officers shall, if necessary, give the like aid as they would be bound to give for enforcing the speedy and complete execution of any such decree."

If he mistook not, in introducing the Bill, he had stated that it was not his purpose to recommend the enforcement of so summary a law, and unquestionably the provisions of the present Bill were of a much more moderate character. It appeared to him that the Honorable Member opposite (Mr. Harington) had made a suggestion which might be found well worthy of adoption in the event of the Bill passing the second reading. He (Mr. Sconce) agreed with his Honorable friend, that it might be found expedient to introduce a Clause providing, if necessary, for an early adjustment. He mentioned at the last Meeting of the Council that he was prepared, on his own part, to introduce a Clause for the purpose of allowing interest upon the purchase money from the date on which possession of the land should be taken, till such purchase money was paid. The rate of interest he had fixed at six per cent., but it would of course be determined at the discretion of the Council whether that would be a reasonable sum or not. If it should be considered expedient to make even further provision on the subject, the time might be fixed within which payment or a reference to arbitration should be made. Indeed, from the papers printed with the Bill, it would appear that no time was lost in making payment. The Commissioner observed :—

"The term of fifteen days having expired, the Deputy Collector settles the claims, and reports his proceedings for confirmation. As fast as they come in, I revise them, and with very few exceptions confirm them at once, and as soon as the settlement is completed, any property which has fallen into the hands of Government, by the refusal of the owners to remove it, is sold by auction, and possession given to the Railway Company. In fact, I do not delay possession on account of cases returned for revision, as the worst that is likely to come of taking the land at once is that I must in the end accept the valuation to which I have objected. The Deputy Collector may take from one week to two weeks making his settlements. In order to expedite his work, I have authorized them to pay for all houses and other property under fifty Rupees in value without waiting to report; and where his proceedings have to come up for revision, I have directed that the final roobukarees be reduced to the fewest words; but still there must be a record, and there must be time occupied in making it."

This explanation of the course followed by the Railway Commissioner showed his readiness to expedite as much as possible the adjustment of claims and payment of compensation.

With these remarks he begged to press his Motion for the second reading of the Bill.

The Council divided.

Ayes 5.	*Noes* 2
Mr Sconce.	Sir Charles Jackson.
Mr Forbes.	The Vice-President.
Mr LeGeyt.	
Mr Harington.	
Sir James Outram.	

So the Motion was carried, and the Bill read a second time.

CUSTOMS DUTY (BOMBAY).

MR LEGEYT moved the second reading of the Bill (No 1) "to amend Act I of 1852 (for the consolidation and amendment of the Laws relating to the Customs under the Presidency of Bombay)." He said that the object of this Bill was to raise the Customs Duty paid upon Salt imported into Bombay from twelve Annas to one Rupee per maund.

THE VICE-PRESIDENT said, it appeared to him to be very inconvenient to have two Bills to amend the same Act The better way would be to consolidate both Bills into one. The Bills, after being read a second time, might be referred before publication to a Select Committee for that purpose.

MR. LEGEYT said, at the time he introduced this Bill, he had not received the papers relating to the Bill which he had subsequently brought in But he had no objection to adopt the suggestion of the Honorable and learned Vice-President.

The Motion was carried, and the Bill read a second time.

MR. LEGEYT then moved the second reading of Bill (No. 2). He said, the object of this Bill was to raise the Customs Duty upon Spirits exported from any Port in India, and imported to any Port in Bombay.

The Motion was carried, and the Bill read a second time.

WATER SUPPLY (KURRACHEE).

MR. LEGEYT moved the second reading of the Bill "to provide for better supplying with water the town and suburbs of Kurrachee."

The Motion was carried, and the Bill read a second time.

CRIMINAL PROCEDURE.

On the Order of the day being read for the adjourned Committee of the whole Council upon the Bill "for simplyfying the Procedure of the Courts of Criminal Judicature not established by Royal Charter," the Council resolved itself into a Committee for the further consideration of the Bill.

The postponed Section 229 provided as follows:—

"Criminal trials before the Court of Session shall ordinarily be by Jury. But if a Court of Session shall consist of three Judges, Criminal trials may be held before a Court so constituted without a Jury. The judgment of the Court in trials so held shall be according to the opinion of the majority Trials by Jury may be held before a single Judge of a Court of Session."

MR SCONCE said, as the Bill now stood, the rule would be that, unless a Court consisted of three Judges, trials should ordinarily be by Jury, and in Sections 232 and 233 was set forth the constitution and the power proposed to be vested in the Jury But it appeared to him that this representation of a Jury was in every sense a sham. First as to the Members of the Jury. It might consist of three persons; but it appeared to him that a Jury so constituted, whether with reference to the limited number, or to the qualification of the persons of whom it would ordinarily be composed, must be held to be quite inadequate to exercise effectively the judicial functions of a Jury properly so called. Further, the Sections went on to provide that the Jury should, under certain circumstances, convict; but if they acquitted an accused, and the Judge disapproved of the verdict, a reference might be made by him to the Sudder Court for a re-hearing. This might or might not be a proper trial, but in his opinion the Jury whose verdict was so treated was not a Jury. Whether, therefore, with reference to the number required to constitute a Jury, or to the utter negation of power, the word seemed wholly inapplicable. For his own part he considered it would be preferable to take two courses. He

would adopt a nearly similar suggestion to that which stood in the Bill as it came from England, that the Governor-General in Council should be vested with the discretionary power of determining in what districts or places, from the number or respectability of the residents, a well working and satisfactory Jury could be got together, and to this he (Mr. Sconce) had no objection. But, on the other hand, if in any district or place Government deemed it inexpedient to extend trial by Jury, trials before a single Judge should be with the aid of Assessors. In contrasting his suggestions with the provisions of the Chapter now before the Council, there appeared to him to be no comparison between the character of the one and that of the other. As the Chapter now stood, the word "Jury" was a mere shadow of the reality, and one which the Council should not embody in the Code.

Then again he entertained material objections to Sections 230 and 231, which provided for the creation of registered and non-registered persons. The Bill, as it originally came from England, provided for cases in which British subjects were concerned as accused, and, accordingly, the registration of British subjects with others was provided for. But now that the trial of British subjects had been excluded from the scope of the Bill, the same proposal remained, and registration was intended to be applied to Europeans other than British subjects, to Armenians, Americans, and East Indians. But he must say he did not see any necessity for making this provision for such exceptional interests. In many districts of Bengal, European Foreigners or Americans never set their feet. With regard to East Indians, he could name towns in which they numbered fifteen hundred or two thousand. Among them there were men of great respectability, industry, and intelligence. But taking them as a body, they were for the most part ignorant and uneducated, and a vast number of them were unable to understand or speak English at all. Of what utility, therefore, would it be to create in their favor such a distinction. But, indeed, it appeared to him it was not very clear how the proposed registry was to be effected. The Bill provided that parties might be registered "according to such rules as the Governor-General in Council shall prescribe." Taking the case of two thousand or fifteen hundred East Indians, was the Governor-General in Council to select from among them one-fourth, or one-half, or the whole; on what principle was the selection of Jurors to be made, and, above all, on what principles were any members of the same class to be deprived of the benefits of trial by Jury, which the Bill would extend to those who had the fortune to be registered? It seemed to him (Mr. Sconce) that, were the Legislature to pass such a law, the effect of it would only be to rouse feelings of jealousy and suspicion, or to excite in the minds of the non-registered classes ideas that a man living in one bazaar of a town had different interests from those of another man living in another bazaar of the same town. In lieu therefore of the system of registration now provided for, he would propose that a general Jury List should be prepared, and that it should be made as little exclusive as possible.

The amendments upon the Chapter of which he had given notice were as follows:—

The omission of Section 229, and the substitution of the following:—

"The local Government may order that the offences specified in Chapter XVIII of the Penal Code, or (as may be) that all offences triable by a Court of Session, may be tried by Jury as hereinafter provided, in such districts as it may see fit to specify in such order; and the said local Government may, from time to time, revoke or alter such order.

"Criminal trials before the Court of Session, if that Court consist of three Judges, shall be conducted by the Judges sitting alone; or with a Jury, when to any district, as provided in the last preceding Section, trial by Jury shall be extended. If the Court of Session consist of a single Judge, Criminal trials shall be conducted with the aid of two or more Assessors, or with a Jury, when to any district as above provided trial by Jury shall be extended."

The omission of Sections 230, 231, 232, and 233, and the substitution of the following:—

"In districts to which by Section trials may be by Jury, when an accused person shall be sent for trial before the Court of Session, and the charge on which he is to be tried has been read over to him, the Magistrate shall require him to state whether he elects to be

tried by Jury or otherwise: if the accused person, or at least one-half of the accused persons, where two or more are accused, do not elect to be tried by Jury, the trial shall be conducted with or without Assessors, according as the Court of Session consists of one or three Judges.

"A Jury shall consist of six or of nine persons, as may be determined by the Court; and unanimity, or a majority of two-thirds, with the concurrence of the Judge or Judges, shall be necessary for a verdict of guilty: and in default of such unanimity, or such majority, with the concurrence of the Judge or Judges, the accused shall be acquitted.

"If the Court of Session shall consist of three Judges, the judgment of the Court, when it has to be expressed, shall be according to the opinion of the majority.

"When a trial shall be conducted before the Court of Session, with the aid of Assessors, the opinion of such Assessors shall be given separately, and if any of the Assessors or the Court shall desire it, the opinion of the Assessors shall be recorded in writing But the decision is vested exclusively in the Judge or Judges."

The insertion of the following proviso after the word "proper" in the 9th line of Section 235:—

"Provided that, in the list of Jurors to be summoned for any trial, such a proportion of persons representing the section of the community to which the accused belongs, as may, under the circumstances of each district, be practicable, and may by the Sudder Court be deemed reasonable, shall be included: provided also that—"

The introduction of the following words at the beginning of Section 253:—

"In cases tried with Assessors, the Judge, before pronouncing his own judgment, shall call upon the Assessors for their opinions."

Accordingly he begged to submit for the consideration of the Committee the omission of Section 229, and the substitution of the following:—

"The local Government may order that the offences specified in Chapter XVIII of the Penal Code, or (as may be) that all offences triable by a Court of Session, may be tried by Jury as hereinafter provided, in such districts as it may see fit to specify in such order; and the said local Government may from time to time revoke or alter such order."

SIR CHARLES JACKSON said, he really thought (and indeed the speech of the Honorable Member for Bengal suggested the idea) that, instead of considering this Chapter piecemeal as it were, the whole Chapter had better be struck out at once. Section 230, which empowered the Governor-General in Council to form Juries of his own, appeared to him (Sir Charles Jackson) to be a most unconstitutional Clause. If there was to be a Jury, let it be an independent Jury, or have no Jury at all. Then Sections 231 and 233 were most objectionable. Under the latter Section, a Jury of nine Jurymen might acquit an accused person, and the Sudder Court might afterwards hang him notwithstanding such acquittal. Such a provision was perfectly monstrous. The several Sections of this Chapter were so involved one with the other, that he considered it utterly impossible to consider them separately Section by Section, and he therefore begged to move the omission of all the Sections from 229 to 233.

The Motion was subsequently, by leave, withdrawn.

MR. HARINGTON said, in addressing himself to the question before the Committee, namely, that Section 229 be omitted and the Section proposed by the Honorable Member for Bengal substituted for it, he would follow the course pursued by that Honorable Member, and consider the whole Chapter. The Honorable Member for Bengal had stated that he considered his proposed amendments a great improvement on the Chapter as it now stood. With all deference to the Honorable Member, he (Mr. Harington) could not agree with him. What the Honorable Member for Bengal now desired to do was done in 1832, that is, upwards of twenty-five years ago. Previously to that period, except in the Supreme Courts of Judicature, trial by Jury, or with the assistance of Assessors, was not known in this country. In the Courts of Sessions in the Mofussil, Criminal trials were held with the aid of a Mahomedan Law Officer. If the Judge agreed in the futwah delivered in by that Officer at the conclusion of the trial, and the case was one in which it was competent to him to pass sentence, he passed sentence; but if he differed from the Mahomedan Law Officer, or if, though he concurred with that Officer, the sentence was beyond his competency to pass, he referred the proceedings for the orders of the Sudder Court. In 1832, during the administration of that enlightened

Nobleman, Lord William Bentinck, it was thought that the time had arrived when an attempt should be made to introduce trial by Jury in the Mofussil, and a law was passed for that purpose, which was still in force. In the Madras Presidency trial by Jury had existed since 1827. The amendment then of the Honorable Member for Bengal, which left it to the Government to determine in what districts trials should be by Jury, really took them back more than a quarter of a century. But this was not all—it proposed the adoption of a measure which had already been fully tried, but from which little, if any, good had resulted. Now it certainly appeared to him (Mr. Harington) that any law of this kind which might be passed should be a law of general application, and that the duty and responsibility of determining in what districts it should be enforced, should not be thrown upon the Government. It was almost impossible for the Government to discharge the duty with satisfaction to itself, and the consequence would be, what had already happened, that having little, if any thing, to guide it in making its selection, it would escape from the difficulty by extending the law to all parts of the country without distinction. But supposing the Government, in the exercise of the discretion proposed to be invested in it, to extend the law to some places, and not to others, why, it might fairly be asked, was one district to have the benefit, if it might be so called, of trial by Jury, while it was denied to the adjoining district?

The next Section which the Honorable Member for Bengal wished to substitute for the corresponding Section in the Bill, as it stood, proposed no less than four modes of trial in a Court of Session, which he (Mr. Harington) considered objectionable. First, the trial might be held before a Court consisting of three Judges sitting alone. Sitting alone, he understood, meant sitting together, but without a Jury or Assessors. Secondly, the trial might be held before a Court consisting of the same number of Judges with a Jury. Thirdly, the trial might be held by a single Judge with a Jury; and fourthly, the trial might be held by a single Judge with Assessors whose opinion was to have no more weight than what the Judge might choose to give to it. In other words, the Judge might accept it, or set it aside just as he pleased.

With regard to Section 233, he could only repeat what he had said on a former occasion, that he was very sensible it was open to objection, and he was quite willing to agree to any modification of the Section, which, while it gave some power of interference to the Sudder Court, in cases in which the verdict of the Jury was manifestly wrong, should restrict the exercise of that power within proper limits.

THE CHAIRMAN said, this Section involved so many different propositions, that it appeared to him hardly possible to come to a decision upon it, without taking its several provisions into consideration separately. He had no objection to the proposition contained in the first part of this Section, but there was this difficulty which he felt with regard to it, namely, whether an intelligent Jury could be formed in every district in the Mofussil. He thought that it was rather the duty of the Legislature than of the local Government to determine whether trials by Session Courts should be by Jury or not. The only object for leaving this to the local Government was that it might be presumed they had the best opportunity of knowing in what districts or places a sufficient number of respectable and intelligent Jurors could not always be obtained. Nevertheless, he objected entirely to the principle of leaving it to the local Government to decide in what districts or places trials by Session Courts should be, and in what districts or places they should not be, by Jury. Entertaining this opinion, therefore, he was quite prepared to oppose the Motion of the Honorable Member for Bengal for the omission of this Section altogether. At the same time he reserved to himself the right, in the event of that Honorable Member's Motion being negatived, to move any amendments he pleased in that Section.

MR. SCONCE'S Motion was then put and negatived:

THE CHAIRMAN moved the omission of the word "ordinarily" in line 2.

Agreed to.

THE CHAIRMAN said, he thought that the remainder of this Section was better adapted to the Bill, which would provide for the constitution of Session Courts. He should therefore now move the omission of all the words after the word "Jury" in line 3.

The Motion was carried, and the Section as amended then passed.

Section 230 provided as follows:—

"In trials by Jury before the Court of Session in which a European not being a British subject, or an American, or an East Indian, or an Armenian, or a person of any other class to which the Governor-General in Council may see fit to extend this rule, registered according to such rules as the Governor-General in Council shall prescribe, is the accused person or one of the persons accused, one-half at least of the Jury shall consist, if the accused desire it, of persons so registered."

MR. SCONCE moved the omission of this Section.

SIR CHARLES JACKSON said, he should certainly support this proposition. He objected entirely to giving the Governor-General in Council the power to lay down rules as to who should be Jurors and who not. Instead of doing so, he (Sir Charles Jackson) thought there should be a Chapter in this Bill, defining what classes were to be Jurors, and laying down rules respecting the calling and challenging of Jurors. If they were to have a Jury, it would be better to have an independant Jury, and not a shadow.

MR. HARINGTON said, the Section, as it now stood, was the same with some slight alterations as that proposed by Her Majesty's Commissioners, who must have known the difficulty of laying down any positive or absolutely restrictive rules on the subject. He felt certain that, in many districts, it would be impossible to get a sufficient number of Europeans, or of any of the other classes specified, to form a Jury. Granting, however, that the Council concurred in the objections taken by the Honorable and learned Judge opposite (Sir Charles Jackson), there seemed no reason why the whole Section should be omitted; surely it would be sufficient to leave out the words which had been objected to.

MR. FORBES said, it would be more convenient if the Honorable and learned Judge who had just spoken would mention what words he would propose to substitute for the Section proposed to be omitted. He thought that, generally speaking, the Council sitting in Committee should have the choice of two Sections, and should not be called on to omit one already in a Bill without knowing what it was intended to substitute. They might otherwise, after agreeing to omit one Section, find that they preferred what had been omitted to that which was proposed in its place.

MR. SCONCE said, a principle much deeper than the preparation of Jury Rules or Lists, for which Section 235 provided, was involved in this Section. His objection to it was not because he thought that the Governor-General in Council should not have the power of framing the rules; but his ground of objection was that certain classes were to be selected, and to them only were the rules to be applied. It was true that the word "Christian" was not mentioned in the Section, but it seemed to him that he was perfectly correct in assuming that a distinction was intended to be made in favor of Christian classes. The only indication now given in this Section was that of Christian classes. If it were said that he was mistaken in his supposition, he would ask whether the Legislature would leave it to the Governor-General in Council to prepare a list of Parsees. In Kishnaghur, moreover, there was a large body of Native Christians. Would it be necessary to include them among the registered persons, or would they be left among the non-registered classes?

MR. HARINGTON said, the assumption of the Honorable Member for Bengal that religion had had something to do with the preparation of this Section, was entirely groundless. Any one who had had Mofussil experience, must have felt how painful it was to try a Eurasian or an American with a Jury composed entirely of Natives. The Section was intended for the protection of the different classes of persons specified in it, and he (Mr. Harington) considered it a great improvement on the present law.

THE CHAIRMAN said, this Section was founded on Section 260 of the Code as proposed by Her Majesty's Commissioners, which provided—

"Criminal trials before the Session Judge, in which a British subject, or a European, or an American, or an East Indian, or an Arme-

nian, or a person of any other class to which the Governor-General in Council may see fit to extend this rule, registered according to such rules as the Governor-General in Council shall prescribe, is the defendant or one of the defendants, shall be by Jury, of which at least one-half shall consist, if such defendant desire it, of persons so registered."

The object of that rule, it appeared to him, was to give to certain classes of Foreigners the right to be tried by a Jury, of which one-half at least should consist of their own countrymen. If a Frenchman were tried, it might be difficult in some places to form a Jury, half of which should be composed entirely of Frenchmen, but there would not be the same difficulty in getting half the Jury to consist partly of Europeans, or East Indians, or Americans. Referring to this difficulty, the Commissioners had observed as follows:—

"It will be seen, however, on reference to the rules which we have proposed, that the right of trial by Jury, in the case of persons residing beyond the limits of any place to which this mode of trial is extended, is to be conditional upon registration, according to such rules as the Governor-General in Council shall prescribe.

"In a country with such a diversified population as India comprehends, it would be extremely difficult to insert in a Legislative measure any positive rule of national or local distinctions which would not be open to grave objections. The difficulties of legislation will be met to a great extent by empowering the Governor-General in Council to issue, from time to time, such instructions as he may deem proper in regard to the registration of persons belonging to those classes mentioned in the rules, or of any other persons to whom, in his judgment, the right of trial by Jury should be extended; and questions of a difficult and delicate nature will be anticipated by the Government, and not discussed in the Courts. It will be at the option of the parties entitled to register to avail themselves of their privilege, and we think they should be allowed to exercise this option at any time previous to trial. A reference to the register will at once decide the right to be tried by a Jury."

He understood the principle laid down by the Commissioners to be the same as that provided for in this Section of the Bill, which provided that certain classes were to be "registered according to such rules as the Governor-General in Council shall prescribe." He thought the rule as now worded to be a very objectionable one. Why, he would ask, should they leave it to the Governor-General in Council in his Executive capacity to do what the Governor-General in Council in his Legislative capacity ought to do? Was it because this Council did not know what rules ought to be passed, or was it that they wished to save themselves the trouble of framing them? He (the Chairman) was clearly of opinion that, if it were necessary to lay down any rules at all, it was the duty of this Council to do so. The Governor-General in his Executive Council had not so much time for discussing the rules relating to the qualification of Jurors, the mode of summoning them, the right to challenge, and other details connected with trial by Jury, as he had in his Legislative Council. Such matters were provided for in England, not by Order in Council, but by Act of Parliament. Surely then such questions ought to be decided by this Council, in which all the proceedings were public, and published for general information. But the Section further provided that "persons of any other class to which the Governor-General in Council may see fit to extend this rule" might also be registered, and this rule also appeared to him to be highly objectionable. Supposing the Governor-General in Council were to extend the rule to Mahomedans (and, as the Section was now framed, this was a matter which depended entirely on the particular views of the Governor-General in Council for the time being), then there would be a Registry List, upon which any Mahomedan might put his name, and then the half Jury for the trial of a European, instead of being Europeans, might be taken from the registered class in which Mahomedans might preponderate. It was true that there would be some difficulty in defining what classes should be registered. But the difficulty would not be got rid of by imposing it upon the Governor-General in Council in his executive capacity. The question must be considered and determined somewhere, and, in his opinion, it was the duty of this Council to devote the time and attention necessary to a proper determination of the subject. He should propose therefore to omit the general words about persons of any other class.

The Chairman

If the Bill were re-published, as he thought it ought to be, and if any class considered that it had been unfairly dealt with, they would have the opportunity of addressing the Council and representing the hardship of their case.

MR. SCONCE'S Motion was by leave withdrawn.

THE CHAIRMAN moved the omission of the words "or a person of any other class to which the Governor-General in Council may see fit to extend this rule, registered according to such rules, as the Governor-General in Council shall prescribe."

Agreed to.

THE CHAIRMAN moved the omission of the words "so registered at the end of the Section" and the substitution of the following :—

"(Qualified to serve on Juries) of his own race or class, if practicable; or if that be not practicable, of Europeans, Americans, East Indians, or Armenians so qualified."

The Motion was carried and the Section as amended then passed.

Section 231 provided as follows :—

"In trials by Jury before the Court of Session in which registered and non-registered persons are committed for trial together, one-half of the Jury, if the non-registered person desire it, shall consist of non-registered persons."

THE CHAIRMAN said, that this Section, as it now stood, would be inconsistent with the amendments just adopted in the preceding Section. He should therefore propose the omission of this Section, and the substitution of the following for it :—

"In trials before the Court of Session, in which a person not belonging to any of the races or classes specified in the last preceding Section shall be tried, either alone or jointly with any person belonging to any of the said races or classes, one-half of the Jury, if the accused person who does not belong to any such race or class desire it, shall consist of persons not belonging to any of the said races or classes."

This would enable a native, if tried together with a European, or if tried alone, to insist upon his being tried by one-half of his own countrymen.

Agreed to.

The Council went back to Section 230, and made a verbal amendment therein.

The postponed Section 232 provided as follows :—

"In trials by Jury before the Court of Session, the Jury shall consist of such number of persons, not being less than three nor more than nine, as the Court shall direct."

MR. SCONCE said, he thought that a Jury consisting of three persons would have too few voices to prevail against the opinion of the Judge in the event of his not concurring with them in their verdict. He would say six, but would prefer even nine, as the number of persons to compose a Jury. He should therefore move to omit "three" and to substitute "six" for it.

SIR CHARLES JACKSON said, he had no objection to the substitution of "six" for "three," but he did not see the use of the words "nor more than nine;" though, if a maximum were necessary to be fixed, it should be an even number.

THE CHAIRMAN said, he thought that, if they fixed upon six as the number for a Jury, there might be difficulty in many places to get the half of a Jury composed entirely of Europeans or entirely of Americans. He therefore moved by way of amendment that "four" be substituted for "three."

The Council divided—

Ayes 4.	*Noes* 3.
Mr. Forbes.	Mr. Sconce.
Mr. Harington.	Sir Charles Jackson.
Sir James Outram.	Mr. LeGeyt.
The Chairman.	

So the amendment was carried.

THE CHAIRMAN then moved the omission of the words "nor more than nine, as the Court shall direct."

The Motion was carried, and the Section as amended then passed.

Section 232A provided as follows :—

"If the Jury are unanimous in a verdict of guilty, or if a majority of the Jury find a verdict of guilty, and the Judge concur in such finding, the accused shall be convicted. In default of such unanimity, or of such majority

with the concurrence of the Judge, the accused shall be acquitted."

MR. HARINGTON moved the addition of the following words:—

"If the Jury be equally divided in opinion, the Judge shall decide whether the accused shall be convicted or acquitted."

SIR CHARLES JACKSON said, the decision upon this question would determine whether there should or should not be an Appeal in Criminal Cases. If the Jury were divided two against two, the decision of the Judge would be considered most unsatisfactory, and it would be absolutely necessary to provide an appeal in such cases.

MR. HARINGTON said, the opinion of the Judge must be presumed to be at least equal to that of a Juror, and the proposed amendment would only be giving his opinion the same weight. He (Mr. Harington) imagined that most decisions were unsatisfactory to the losing parties, but he was at a loss to understand how any person could reasonably be dissatisfied with the decision of three against two, one of the three being an intelligent Judge.

SIR CHARLES JACKSON said, he would only add that he would, in such cases, prefer following the practice observed in England, and he should therefore move by way of amendment to substitute the words "the Jury shall be discharged and the prisoner be tried again" for the words "the Judge shall decide whether the accused shall be convicted or acquitted."

THE CHAIRMAN said, the proposed amendment would give rise to a great deal of difficulty. There would be constant differences of opinion in Juries, and it would be very hard indeed to have a prisoner tried over again. Rather than do so, he would acquit him

SIR CHARLES JACKSON'S amendment being put, the Council divided—

Ayes 2.	*Noes* 5.
Sir Charles Jackson.	Mr. Sconce.
Sir James Outram.	Mr. Forbes.
	Mr. LeGeyt.
	Mr. Harington.
	The Chairman.

So the amendment was negatived.

MR. HARINGTON'S Motion being put, the Council divided—

Ayes 5.	*Noes* 2.
Mr. Sconce.	Sir Charles Jackson.
Mr. Forbes.	The Chairman.
Mr. LeGeyt.	
Mr. Harington.	
Sir James Outram.	

So the Motion was carried, and the Section as amended then passed.

Section 233 provided as follows:—

"When an accused person is acquitted by the verdict of a Jury, if the Judge shall be of opinion that the verdict is contrary to the evidence, and that the accused ought to have been convicted, he shall submit the proceedings to the Sudder Court, and it shall be lawful for such Court to pass such orders thereon as it shall think proper."

MR. SCONCE said, he apprehended that they had now come to the tug of war. They had gone over a great deal of ground, first, by affirming that trials before the Courts of Session should be by Jury; next, from what classes Juries should be formed; and, lastly, the number of persons required to form a Jury. The question which this Section brought before the Committee was whether a trial being once held and a verdict of acquittal given by the Jury, if the Judge dissented from that verdict, he could put the accused again upon his trial by referring the case to the Sudder Court. It had often occurred to him in considering this question, that the employment of the name of a Jury resembled very much the ends and purposes of a Tulchan calf. Any one who had read *Carlyle's Commentaries on Cromwell's Letters and Speeches* knew to what he alluded. A Tulchan, as he remembered, was a stuffed calf brought up to a cow to induce her to let down her milk. So here the pretended constitution of a Jury was to be made our Tulchan, promising nominally a scheme of procedure with which the functions of the Court did not substantially correspond. By allowing a reference to the Sudder Court, when once a verdict was given, it seemed to him that the effect of it would only be to throw over the Jury. He should move the omission of this Section.

MR. HARINGTON said, he had already admitted that this Section was

open to objection. But, although trial by Jury had, with reference to the provision contained in the Section, been called a sham, it appeared to him that in practice it would not prove so. What he wished to avoid was the failure of justice, which he felt sure would constantly take place if the verdict of acquittal by a Jury, however opposed to the record, must necessarily be followed by the discharge of the accused party; and, above all, he deprecated such indecent exhibitions as had lately been witnessed either at Bombay or in England, when the Judge, on receiving from the Jury a verdict of not guilty in the face, as he thought, of clear proof of guilt, could not refrain from exclaiming—"Well, gentlemen, I am glad that is not my verdict, but yours." If, however, it were considered objectionable to give the Sudder Court the power with which this Section would invest it, some provision should at least be made, allowing the Sudder Court, on a reference from the Session Court, to order a new trial where a verdict of acquittal was manifestly contrary to the evidence, and he (Mr. Harington) was quite prepared to agree to the Section being modified to this extent.

THE VICE-PRESIDENT said, he should certainly vote in favor of the omission of this Section altogether. He did not know what was meant by the words "to pass such orders thereon as it shall think proper" at the end of the Section. But whatever they might mean, it could not be right, he thought, that, after a man had been acquitted by a Session Court, the Sudder Court should have the power to hang him. With reference to the unseemly case referred to by the Honorable Member (Mr. Harington), in which a Judge had observed to the Jury, "I am glad, gentlemen, that is not my verdict," he (the Vice-President) could only say that he thought the Judge had overstepped the bounds of his jurisdiction, and that he had no more right to say what he did to the Jury, than the Jury would have had at the close of the charge to say—"We are glad that is not our law."

MR. SCONCE'S Motion was then put and carried.

MR. HARINGTON moved the introduction of the following new Section after Section 232:—

"When an accused person is acquitted by the verdict of a Jury, if the Judge shall be of opinion that the verdict is contrary to the evidence, and that the accused ought to have been convicted, he shall submit the proceedings to the Sudder Court, and it shall be lawful for such Court to order a new trial in the case."

SIR CHARLES JACKSON said, this Section appeared to him to be just as mischievous in principle as Section 233, which had just been negatived.

The question being put, the Council divided:—

Ayes 2.	*Noes* 5.
Mr. Forbes.	Mr. Sconce.
Mr. Harington.	Sir Charles Jackson.
	Mr. LeGeyt.
	Sir James Outram.
	The Chairman.

So the Motion was negatived.

The postponed Section 234 was passed as it stood.

The postponed Section 235 provided as follows:—

"The Sudder Court shall have power, from time to time, to make and establish such rules with respect to the qualification, appointment, form of summoning, challenging, and service of such Jurors, and such other regulations relating thereto, as it may deem expedient and proper; provided that such rules and regulations shall, before they are issued, have received the sanction of the Governor-General in Council."

THE VICE-PRESIDENT said, it appeared to him that, until the rules referred to were prepared, the provisions of this Section would not come into operation. He should move therefore that the Section be omitted, and that it be referred to a Select Committee with an instruction to prepare Jury Rules.

The Council divided—

Ayes 6.	*Noes* 1.
Mr. Sconce.	Mr. Harington.
Sir Charles Jackson.	
Mr. Forbes.	
Mr. LeGeyt.	
Sir James Outram.	
The Chairman.	

So the Motion was carried.

THE VICE-PRESIDENT moved that the Select Committee consist of Mr. Harington, Mr. LeGeyt, Mr. Forbes, Sir Charles Jackson, and Mr. Sconce.

MR. HARINGTON moved by way of amendment that his name be omitted, and the Vice-President's substituted.

Agreed to.

The postponed Section 236 was passed as it stood.

The postponed Section 249 provided as follows:—

"When the case for the prosecution has been brought to a close, the accused person shall be called upon to enter upon his defence, and to produce his evidence. The Court may put such question to the accused as it may think proper."

SIR CHARLES JACKSON moved the omission of the words "the Court may put such questions to the accused as it may think proper." He said, he need not repeat what he had already stated on a former occasion. He would only mention in addition that, if this power were entrusted to any one, it would be most dangerous to entrust it to Judges who had not received a legal education, and who had not sufficient experience in matters of this nature. He would not allow it even to the Judges of the Supreme Court. The objection was, that it would introduce the French system, and make the Judge a prosecutor, and to prevent him from preserving that calm and unprejudiced position which it was necessary for a Judge to maintain.

SIR JAMES OUTRAM said, he quite agreed with the Honorable and learned Judge. The terms of the Clause were—"the Court may put." Would they preclude the public prosecutor instead of the Judge, with consent of the Court, from putting any questions to the accused person? If so, he proposed to move an amendment to that effect.

THE VICE-PRESIDENT said, they had already passed a Section which would enable a Magistrate to examine an accused person.

SIR JAMES OUTRAM said, he conceived that that was very different. The Court of Session was a Court of final decision, whereas there was an appeal from the orders of a Magistrate.

SIR CHARLES JACKSON said, he quite agreed with the Honorable General. In the hurry in which some of the Clauses had been passed, he had either overlooked the Clause referred to by the Honorable and learned Chairman, or must have thought that such an examination as took place before Magistrates in England, or in Magistracies under the Supreme Court, was intended. There it was called the examination, but the examination was not taken in the way of question and answer; the prisoner was simply asked whether he had any thing to say. He would remark, too, that such a power as that now under consideration was particularly useless and dangerous in this country, where, whether on account of the climate, or from whatever other cause, natives could seldom twice repeat the same statement as to a fact.

MR. HARINGTON said, whether the words in question were omitted or not, it appeared to him that the ground urged by the Honorable and learned Judge (Sir Charles Jackson) was not tenable. If valid, the objection would apply equally to the cross-examination, by the presiding Judge, of the witnesses for the prosecution and the defence.

MR. SCONCE said, the object of the proposed omission was to prevent the prisoner being pressed or driven into a corner. Considering the earlier power given to a Magistrate, it appeared to him (Mr. Sconce) that, after a case was closed, it should no longer be competent to a Court again to elicit by sharp examination any statement from the prisoner. It was under the apprehension of the power being abused that he objected to its use.

MR. LEGEYT said, he confessed he had no fear of the evil consequences which the Honorable and learned Judge on his left (Sir Charles Jackson) and the Honorable Member for Bengal apprehended would follow the exercise of such a power. He did not think that Sessions Judges would abuse the power. Those who had presided over Native trials knew how desirable it was to get a prisoner to elucidate the truth of statements deposed to by witnesses. Now two witnesses might concur in saying

that the prisoner was at a certain place on a certain day. The Judge would have the power under this Section of applying to the prisoner to say where he was on that particular day. If the prisoner found it inconvenient to answer the question, he would remain silent. If however he could give a satisfactory answer, he would give it. He (Mr. LeGeyt) had sometimes exercised this power, and he should be very sorry indeed to see the power dispensed with. He would of course allow the prisoner the option of not answering. If he declined to answer, the Judge, in directing the Jury, would draw their attention to the circumstance. He supposed that the whole object of a trial was to convict a man if he was guilty, or to acquit him if innocent. Therefore he would say, do not deprive the Judge of this power, which, if not grossly abused, cannot but prove beneficial to the cause of justice.

MR. FORBES said, he thought that the retention of the words proposed to be omitted would tend to the improvement of the administration of justice. In their great anxiety to secure the rights of rogues, they were sometimes apt to forget the rights of honest men. When a crime was committed, he must confess that his sympathy was rather with those against whom the crime was committed than with those by whom it was committed; and he did not participate in the apprehensions felt by the Honorable and learned Judge (Sir Charles Jackson). So far from entertaining any fear that an innocent person might admit guilt when subject to cross-examination, he was convinced that every step in the examination would only tend more fully to prove his innocence.

THE VICE-PRESIDENT said, he saw no objection to allowing Session Courts to put questions to accused persons. On the contrary, he thought that the proper exercise of such a power would promote the ends of justice. He should therefore vote for the retention of the words proposed to be omitted.

SIR CHARLES JACKSON desired to say a few words in reply upon this question. It had been argued in the first place that the exercise of the power to which he had objected would serve to elucidate the truth. If he were sure of that, he should have no objection to the words referred to. But he maintained that that would not be the case as a general rule in this country. Take for instance the case of a native incapable of appreciating the drift of what was said to him, but knowing at the same time that his life or liberty depended on his answers; or put the case constantly met with in this country of a native incapable of twice narrating an occurrence in the same way. The consequence would be in the first case that the native prisoner, whether innocent or guilty, would embark on a labyrinth of falsehood, and in both cases the Judge would be obliged to pursue him from point to point, and all this would lead to much heat of discussion, which would be wholly unbecoming a Judge. If, on the other hand, the prisoner should be a skilful man, he might elude the questions put to him and make the Judge both angry and ridiculous.

Honorable Members who took a different view of the matter, had entirely lost sight of the same system which prevailed in France. The questions put to prisoners by the Judges in that country were, to his mind, most revolting.

Lastly, there was no definition of the nature of questions to be put, and no provision allowing the prisoner the option of declining to answer.

The Council divided—

Ayes 3.	*Noes* 4.
Mr. Sconce.	Mr. Forbes.
Sir Charles Jackson.	Mr. LeGeyt.
Sir James Outram.	Mr. Harington.
	The Chairman.

So the Motion was negatived.

SIR JAMES OUTRAM moved that the words "allow the Government Pleader or other Officer appointed by the Government to conduct trials before the Court of Session to" be inserted after the word "may" in the 6th line of the Section.

After some discussion the Council divided—

Ayes 3.	*Noes* 4.
Mr. Sconce.	Mr. Forbes.
Sir Charles Jackson.	Mr. LeGeyt
Sir James Outram.	Mr Harington.
	The Chairman.

So the Motion was negatived.

SIR BARNES PEACOCK moved the insertion of the words "or may allow the Government Pleader or other Officer appointed by the Government to conduct trials before the Court of Session to put" after the word "put" in the 6th line.

The Council divided—

Aye 1.	*Noes* 6.
The Chairman.	Mr. Sconce.
	Sir Charles Jackson.
	Mr. Forbes.
	Mr. LeGeyt.
	Mr. Harington.
	Sir James Outram.

So the Motion was negatived.

MR. LEGEYT moved the addition of the following words :—

"But it shall be explained to the accused person that he is at liberty to decline to answer any question so put to him."

The Council divided—

Ayes 4.	*Noes* 3
Mr. Sconce.	Mr. Forbes
Sir Charles Jackson	Mr Harington.
Mr. LeGeyt.	The Chairman.
Sir James Outram.	

So the Motion was carried, and the Section as amended then passed

The further consideration of the Bill was postponed on the Motion of SIR JAMES OUTRAM.

STANDING ORDERS.

MR. HARINGTON said, he had proposed to move to-day the adoption of the Report of the Select Committee on the Message from the Governor-General in Council calling for a report on the practical working of the Standing Rules and Orders of the Legislative Council. But having reason to believe that the Report would give rise to some discussion, he proposed, with the permission of the Council, to withdraw the motion of which he had given notice, and to move on Saturday next that the Council resolve itself into a Committee upon the Report for the purpose of considering any amendments that might be proposed therein.

CUSTOMS DUTY (BOMBAY).

MR LEGEYT moved that the two Bills "to amend Act I of 1852 (for the consolidation and amendment of the Laws relating to the Customs under the Presidency of Bombay)" be referred to a Select Committee, consisting of Mr. Sconce, Mr. Forbes, and the Mover.

Agreed to.

MR. LEGEYT then moved that the Select Committee be instructed to report previously to the publication of the Bills, whether it would not be advisable to consolidate them.

Agreed to.

WATER SUPPLY (KURRACHEE).

MR LEGEYT moved that the Bill "to provide for better supplying with water the Town and Suburbs of Kurrachee" be referred to a Select Committee, consisting of Mr. Forbes, Mr. Sconce, and the Mover.

Agreed to

The Council adjourned.

Saturday, August 27, 1859.

PRESENT:

The Hon'ble the Chief Justice, *Vice-President*, in the Chair.

Hon Lieut.-Genl. Sir James Outram,	H Forbes, Esq.,
Hon H. B Harington,	Hon. Sir C. R. M. Jackson,
P. W. LeGeyt, Esq.,	and
	A. Sconce, Esq.

PORT-DUES (PEGU).

THE CLERK reported to the Council that he had received a communication from the Foreign Department regarding the levy of Port-dues in the Province of Pegu.

MR. HARINGTON moved that the above communication be printed.

Agreed to.

NABOB OF FURRUCKABAD.

THE CLERK also reported a communication from the Foreign Department, forwarding correspondence with the

Government of the North-Western Provinces, relative to the passing of an Act for rescinding Section VIII Regulation II. 1803 and Act XII of 1836, concerning the Nabob of Furruckabad.

MR. HARINGTON moved that the above communication be printed.

Agreed to.

CRIMINAL PROCEDURE.

MR. LEGEYT presented the Report of the Select Committee on Section 235 of the Bill "for simplifying the Procedure of the Courts of Criminal Judicature not established by Royal Charter" submitting proposed Jury Rules.

CUSTOMS DUTY (BOMBAY).

MR. LEGEYT also presented the Report of the Select Committee appointed to consolidate the Bills (Nos. 1 and 2) "to amend Act I of 1852 (for the consolidation and amendment of the Laws relating to the Customs under the Presidency of Bombay)."

JOINT STOCK BANKING COMPANIES LIMITED.

MR. SCONCE moved the first reading of a Bill "to enable Joint Stock Banking Companies to be formed on the principle of limited liability." He said that the progress of public opinion as to the advantages and security arising to the community from the establishment of Joint Stock Companies on the principle of limited liability might be considered a sufficient reason for his dispensing with any lengthy remarks in the introduction of the present Bill. The general purpose of the Bill was to give to Joint Stock Banking Companies the benefit given by the law passed in 1857 to Joint Stock Companies in general. On that occasion the Legislature, he apprehended, following the example set forth in England, thought it expedient to exclude Banking Companies from being formed with limited liability. But by a subsequent Act the power was extended to Banks in England, and on a similar principle it now seemed desirable to adopt the same law in this country. Perhaps in no country in the world, certainly in no country in which we are interested, was the establishment of Banks likely to be so beneficial to the community as in India. He took it to be the object of the establishment of a Bank to bring together capital ready for investment, with a view to its being distributed to those who needed it, and who were in a position to turn it to a better account, than if left in the hands of those to whom it belonged. The position of India with regard to capital was in many ways different from that of other countries. In India, as they all knew, money to a large extent was hoarded and lay idle. If, therefore, by the encouragement of Banking institutions, and more particularly by the adoption of the principle which this Bill proposed to establish, they should succeed in setting free that large capital which now lay buried under the floors of houses, undoubtedly many very material advantages might be expected to result, not only with a view of releasing capital to the profit of the capitalist, but also of employing it to the material relief of the community. It was notorious that the rate of interest exacted by capitalists in this country was, speaking as he might in a European sense, very exorbitant and much beyond the ordinary return sufficient to reimburse and remunerate the capitalist. In England and elsewhere the rate of interest was about 8, 10 or 12 per cent., but in this country parties borrowing money, whether for a longer or shorter period, had to pay 20, 30, and even as much as 40 per cent. Such appeared to him to be the general advantages derivable from the measure. The law of 1857 contained large and ample provisions to guide the management of Banks and to regulate the conduct of the Managers and secure the interests of Shareholders. With these remarks he begged to move the first reading of the Bill.

The Bill was read a first time.

TRADES AND PROFESSIONS.

MR. HARINGTON said, he was desirous of prefacing his Motion for the second reading of this Bill with a few remarks. But, first, he must ask the Council to permit him to introduce at the commencement of Section I, before the words "Regulation V. 1832," the following words, namely, "Regulation IV.

1818 of the Madras Code (prescribing rules for the assessment and collection of the Veesabuddy or Tax upon trade in the Provinces known by the appellation of the ceded districts in the zillah of Bellary and Cuddapah"), to insert the word "also" between the figures "1832" and the word "of" in the first line of the Section, and to substitute the word "are" for the word "is" in the last line. Should this Bill become law, Regulation IV. 1818, equally with Regulation V. 1832 of the Madras Code, would require to be repealed, but in drawing up the Section the former Regulation had been inadvertently omitted.

He would also ask the Council to allow him to strike out the Schedule annexed to the Bill, as well as Section X, and to substitute the following classes for those mentioned in Section VIII, namely,

Under	Class	I.....	5,000	Rs.	yearly
"	"	II	4 000	"	"
"	"	III	3,000	"	"
"	"	IV	2,000	"	"
"	"	V	1,000	"	"
"	"	VI	500	"	"
"	"	VII	250	"	"
"	"	VIII	100	"	"
"	"	IX	50	"	"
"	"	X	25	"	"
"	"	XI .	10	"	"
"	"	XII	5	"	"
"	"	XIII	2	"	"

His reason for wishing, at the present time, to introduce the three higher classes just mentioned into the Bill, was that it was generally considered that the rates at which it was proposed to assess them might fairly be paid by the larger Bankers and Traders without their being unduly taxed, or taxed out of proportion to the lower classes with reference to the extent of their trades or business; and if it was to be done at all, it was obviously better to raise the rates before the Bill was published for general information, than when it got into Committee. Hereafter, if the rates should be found too high, they could easily be modified.

Passing on to Section IX of the Bill, Mr. Harington observed that this Section prescribed that the Collector or other Officer authorized to grant licenses should determine under what class every person to whom a license was granted should be assessed; the Section went on to enact that "such determination should be made with reference to, and after consideration of, the extent of the trade, business, or profession carried on by every such person." It might be objected to this provision that it was too vague and undefined in its character, and that, if large discretion were left to the taxing or licensing Officer, it would lead to considerable diversity of practice, and a greater degree of inequality, if not in the same District, still in different Districts, than had been contemplated by him in his opening speech. The objection had not escaped his observation in drawing up the Section. But he hoped that he had met it in some degree by the power given to the Governor-General of India in Council in Section XXVI, to make, from time to time, rules for the guidance of Officers in matters connected with the enforcement of the Act, provided that such rules were not inconsistent with any of the provisions contained in the Act. The amount of duty chargeable according to the class in which every person required to take out a license was placed, being absolutely fixed by law, he thought that, within the pecuniary limit so fixed, the power thus proposed to be given to the Supreme Government might be legitimately and constitutionally exercised, and that the Supreme Government would be able to lay down such rules for the guidance of the local Officers in fixing the amount of duty to be paid as would insure throughout the country a sufficient approach to uniformity of practice. But he might mention that a duty, approximating as nearly as possible, without any very strict investigation, to about 3 per cent. on the profits or emoluments of the party taking out the license, was what was contemplated by the Government, that being about the rate imposed in England under the Sections of the Act of Parliament which he had read at the time he moved the first reading of the Bill, though a maximum rate of 5,000 Rupees was proposed, which would in no case be exceeded. He thought it right, however, at once to say, that if Honorable Members considered that whatever rule or rate of assessment was

to be followed, it should be made to appear on the face of the Bill, instead of being left to be determined by instructions from Government, he should be quite willing, when the Bill was in Committee, either himself to propose a specific provision to that effect, or to adopt any suggestion that might be made, calculated, in the opinion of the Council, to meet the end in view. His great object in framing the present Bill was to make the mode of assessment of as little an inquisitorial, harassing, or oppressive character as was possible, consistently with a due regard to the purpose for which the Bill had been introduced. The amount of Duty proposed to be levied on licenses granted under the Bill being intended to be comparatively light, it was thought not unlikely that, in a great majority of cases, what might be termed self-classification might be allowed. This, however, could hardly be permitted in this country to any great extent were a general income tax to be imposed without subjecting the Government to great loss, and this was one of the reasons why it appeared to him that the scheme for improving the public Revenue proposed in the present Bill was preferable to an income tax, which, in order to accommodate the amount of the tax to every man's circumstances, and the frequent fluctuations therein, would necessitate a degree and mode of enquiry which he feared would render it a source of constant and endless vexation, annoyance, and disgust, and it might be something worse.

He observed, indeed, that it had been stated that the Duty which would be levied under the Bill would be, to all intents and purposes, an income tax, and he supposed that it was this impression which had given rise to the objection which had been taken to the Bill that it was a partial measure, inasmuch as it proposed, amongst others, to exclude from its operation all Government servants. But, however the Bill might operate, and whatever might be its effect, an income tax was not what was intended, and the inclusion therefore in the Bill of all public Officers with whose salaries the Government had full power to deal without recourse to the Legislature would, he thought, have been improper, and, looking to what had just been said on the subject of official salaries, a work of supererogation. Had the Government, in introducing the present Bill, really intended to impose an income tax, it would of course have included all incomes or salaries from whatever source derived, unless protected by a law superior to any law that could be passed in this country, or unless expressly excepted. But he felt, he might safely say, that no such exception would have been permitted by the Government in favor of its own servants, nor was it the intention of the Government at the present time, in so far as it had the power to prevent it, that those servants should enjoy exemption while other classes were taxed. He believed he should take few if any by surprise by the announcement which he was now authorized to make that it had always been the intention of the Government, simultaneously with the passing of any Legislative measure of this nature, to cause a deduction to be made from all official salaries by a percentage. This would now be ordered, and would take effect from the date on which the present Bill received the assent of His Excellency the Governor-General. The rate of deduction proposed was 3 per cent., being, as already stated, the rate imposed in England. Salaries not exceding 150 Rupees per mensem would be exempt, as also the pay and allowances of Regimental Officers and of Regimental Staff Officers, whether of Regular or Irregular Regiments, but not of Officers in Civil emply or on the General Staff. The deduction would also extend to the civil salaries which it had been proposed to the Home authorities to reduce, according to the reduced scale, equally with the rest. For some months past rumours had been afloat and had appeared in the public prints, which showed that what was now contemplated was no secret. How the information got abroad he did not know, nor did he care to enquire. But only the other day it was stated in a daily paper which had a very wide circulation that the clerks in one of the Public Offices were getting up a Memorial to the Government against the proposed deduction of 5 per cent. from their sala-

ries. He mentioned this to show that what was about to be done had been for sometime under consideration, and had been delayed only until this Bill, or some measure of a similar nature, should become law. The cry of "wolf, wolf" had long been heard, and, as in the fable, he would shortly appear.

But though, as he had stated, the Government had full power to order such amount of deduction from the salaries of the greater portion of its servants as it might deem necessary and proper, without the sanction of the Legislature, there were some official salaries which, being fixed by Act of Parliament, could not be affected by any Act passed in this country. The Officers to whose salaries this remark applied were few in number, but, for the most part, the positions which they occupied were the highest, and the salaries which they drew were the largest in the country. Under this head were included the Governor-General of India, the Governors of Madras and Bombay, the Lieutenant-Governors of Bengal, of the North-Western Provinces and of the Punjaub, the Commander-in-Chief in India and the Commanders-in-Chief at Madras and Bombay, the Judges of the Supreme Courts of Judicature, and he believed the Bishops of the three Presidencies, the Members of the Executive and Legislative Council, and there might be some others. It was not the intention of the Governor-General and of the other Members of the Supreme Government present with the Government that the measure, which now only awaited the order to issue, should pass by them, and their salaries would accordingly be subjected to the proposed reduction from the date which he had mentioned. But in their case, as well as in the cases of the other high Officers whom he had named, it would be necessary for the Home Government to apply to Parliament for an Act of the Imperial Legislation to give legal authority to the extension of the measure to them. Steps would immediately be taken for obtaining this authority.

The only other part of the Bill which he desired particularly to notice at this time was Section XXIII, which provided that nothing in the Act should be deemed to apply to any artificer or workman for hire, or to any laborer, or to any cultivator of land in respect of the produce of such land. In commenting on this Section in the remarks with which he introduced the Bill, he (Mr. Harington) observed—

"It would be deserving of consideration hereafter, whether the Collector or other Officer authorized to grant licenses should not have power to except any person carrying on any petty trade, of whose inability to pay the small sum of two Rupees per annum without great difficulty he might be satisfied, or whether the exception contained in this Section might not properly be carried farther."

He did not anticipate that any great difficulty would be experienced in determining who should or who should not be exempted. Something analogous to this proposition was to be found in the pauper laws. The law said that a person having a good cause of action might be permitted to sue *in formâ pauperis* if he could satisfy the Court, having jurisdiction of the claim, that he was not possessed of sufficient property to enable him to pay the Government Stamp Duty; but before he could enjoy the benefit of this law, it was not required that he should sell the clothes which he wore or the tools or instruments with which he carried on his trade. The same principle which governed the Civil Courts in the administration of the pauper law would, he presumed, govern the licensing or taxing Officer under this Bill in the event of any provision, such as he had suggested, being introduced into it. He now begged to move that the Bill be read a second time.

MR. SCONCE said, the Bill in the form in which it was now presented came in quite a different shape from that in which they had been considering it for the past week, and therefore it might form a ground for the consideration of the Council, whether under such circumstances they should proceed at once to discuss the merits of the Bill as it had now been advanced, or whether its further consideration should not be postponed to the next Meeting of the Council. Under any circumstances, he thought the subject-matter of the Bill was one of gravity and importance, whether looking to the large scale of assessment which the tax pro-

posed to raise, or to the state of financial difficulty in which the Government now lay. He was conscious, as a Member of that Council, that he was placed in a peculiar and somewhat undefined position. The Executive Government came to that Council to be furnished with the means for carrying on the Government, and so far it lay within the functions of the Council to consider the nature of the proposition, and the amount which it would be expedient to sanction. Therefore it seemed to him, besides the mere passing into law such Bills as were laid before them, they had also the responsibility of considering the necessity of the proposed measures. The amounts required might be more or less large, and the principle of assessment or taxation involved more or less substantial, but beyond and before this question he could not help thinking that it was necessary to see whether Government had made out a case to call for the assistance of the Council. In this matter they had to satisfy their own consciences, and they were trustees for the public; and though he admitted the indefinite character of the powers with which they were invested, he could not help considering the justification which the introduction of such a measure should involve. For another reason also it seemed to him that these considerations were of paramount importance. The Bill now before the Council, it was estimated, would yield from one to one and a half crores of Rupees. Now it was one thing to pass this Bill for a period of say one, two, or five years, and another to make it a permanent law of the land. On that ground it behoved them to act cautiously, and to look to Government for such information as would afford good grounds for the adoption of the Bill. He had listened with much interest to the explanations entered into by the Honorable Mover of the Bill, and it was certainly satisfactory to know that the deficit of last year had been considerably reduced. It was also satisfactory to know that Government had undertaken measures to consider the reduction of the different departments, both Military and Naval; but he should have been glad if his Honorable friend had carried the subject farther, and brought down his information to the present day in extension of the information which His Excellency the Governor-General had submitted to the Council on the introduction of the Customs Bill in March last. There were one or two broad facts which required explanation. In the first place, it appeared that, in the year 1856-57, the deficiency between the income and expenditure was about 18 lakhs; in the following year ending 30th April 1858, there was a deficit of 817 lakhs, but in the next year the deficit had risen to 13 crores. The difference between the deficit of the two years 1857-58 and 1858-59 was very considerable, and it would have been of interest to the Council to have been informed how in one year this difference of about five millions of money could have arisen. But again, in the year now in progress, the deficiency was estimated at 684 lakhs, thus falling from 13 crores to about 7 crores. Beyond these figures the Council knew nothing. Therefore it would have materially assisted the deliberation, and tended to the enlightenment of the Council, if Government had given it full information as to the circumstances which affected the rise of all the public charges. The subject represented itself in another light. He found, from the speech of His Excellency the Governor-General, that it had been ascertained that for the year ending April 1858, taking the total deficit to be 817 lakhs, out of that sum 350 lakhs arose from the loss of Revenue, and 130 lakhs from loss of Treasure, thus making 480 lakhs —from two special causes which would seem to be confined to the deficit of 1857-58. Now for the coming year, the estimated deficit was put down at 684 lakhs, and in comparing this deficit with that of 1857-58, as at this time neither loss of Treasure nor loss of Revenue should be anticipated, the loss sustained under these heads in the earlier year would now be added to the assets, and the actual deficit increased by the same amount. He made these observations, not as affecting the principle, or with the view of opposing the second reading of the Bill, but it seemed to him a matter of much importance that the fullest explanation should be placed before the Council as to the present state of finances. It was hardly enough to know, as they knew

by yesterday's Mail, that a Loan was proposed to be raised in England; the capital might be found there, but the interest would have to come out of this country. As to the Bill, he was at one time looking at it in one sense, but its enlargement now would probably tend materially to change that view.

MR. HARINGTON here explained that the Honorable Member was laboring under a mistake. He (Mr Harington) had proposed no alteration in the principle of the Bill. What had fallen from him was merely by way of suggestion. The principle of the Bill was exactly the same as when it was read a first time, and he had no desire to alter it. He said that it might perhaps appear that some of the provisions of the Bill were too vague and indefinite, and that when the Bill got into Committee, Honorable Members or others might make suggestions on this point to which he should be very happy to give full consideration. They might think the rates too high and that Bankers and Traders were not properly classed. This could of course be rectified in Committee, but he begged to assure the Honorable Member for Bengal that the principle of the Bill remained unchanged.

MR. SCONCE said, his remarks referred particularly to the alterations proposed in the Schedule. But he would proceed now to consider the Bill as it originally stood. The lowest rate was fixed at 2 Rupees yearly. Now his Honorable friend had told them that he was prepared to accept a rating of three per cent. on the profits: he would wish to know whether on the net or the gross profits. A tax of 2 Rupees on the net proceeds of a trade supposes a net profit of 66 Rupees per annum. Necessarily, if the tax were on the gross profits, the incidence of the Bill would very materially differ as to the parties brought within the classifications. Going up to the highest class as it formerly stood, a tax of 2,000 Rupees at three per cent. would pre-suppose a net profit of 66,666 Rupees. Now, with regard to the poorer classes of shopkeepers, if it were assumed that a trader, whose gross income amounted to 200 Rupees, should be placed in the lowest class of the Bill, the tax of 2 Rupees on his gross receipt would be 1 per cent. What then he wished to know was, whether a shop-keeper, whose gross profits in selling Rice, Dholl, Tobacco, and so on, did not exceed 200 Rupees, would be subject to the provisions of the Bill. In other respects, the objection which he felt to the form of the Bill had been much overcome by the explanations they had this day heard. He had entertained much objections to the power given to the Collector to determine arbitrarily the rate of assessment payable by the parties required to take out licenses: but it was intended to change this feature in the Bill, and the proceedings of the Collector, it was now admitted, should be regulated by the percentage chargeable upon the income of each individual.

He was not unwilling to agree to a considerable extent to the statement made by the Honorable Member who introduced the Bill, that a trader would reimburse himself by charging the amount of the tax to his customers; but he feared that this alternative would be only a partial relief, and that the tax would largely operate as a tax upon profits. In conclusion, he need only say that he was not prepared to throw out the Bill. He thought that if it were sent into Committee it might be considerably improved, and there was no doubt that many valuable suggestions would be received from all parts of India on the subject, which would considerably assist the Council in its deliberations.

MR. HARINGTON regretted that the Honorable Member for Bengal had not intimated to him his intention of asking for the information with which he now considered it desirable that the Council should be supplied. If the Honorable Member had asked him yesterday, he could have obtained from the Office of the Financial Secretary, and would have brought with him to-day the necessary papers. There was not the slightest disposition on the part of the Government to withhold from the Council any information which it was requisite that they should possess.

MR. SCONCE explained that he had no expectation of being supplied immediately with the information he had referred to. He should be satisfied if the information were furnished when the Bill was under the consideration of the Select Committee.

SIR CHARLES JACKSON quite agreed with the Honorable Member for Bengal. He thought the Council had a right to complain of the manner in which the financial measures of Government were brought forward. It was true that in March last the Governor-General had made a very lucid statement of the financial state of the Government. Since then five months had elapsed, and no further information had been laid before them. They had no knowledge of the actual reductions made or contemplated, or what was the amount realized under the new taxation, or any statement of the amount realized by the Customs Bill which had been passed by the Council, or of the amount expected to be obtained by the Bills now before them. Since the Governor-General's statement a great number of measures had passed into law or been proposed to the Council, namely, the Customs Act, the Bombay Abkarree Act, the Stamp Bill, the new Bombay Excise Bill which had passed two readings, and now there was this present Bill. The Governor-General, without the aid of the Council, had also raised the Duty on Malwa Opium. No complete financial scheme had as yet been presented to the Council, showing what the permanent deficiency would be, or what amount of Revenue was likely to be realized, or, in fact, what was the amount of taxation at the present time. It was quite time to put a stop to this piecemeal Financial Legislation. The Council were in fact legislating completely in the dark. Government ought to give them a full statement of their whole financial scheme, showing the amounts which had been raised under the new taxations, what the permanent deficiency was likely to be, and what measures Government intended to introduce to meet such deficiency. What did the statement of objects and reasons, submitted by the Honorable Mover of the Bill, say? Why, simply as follows:—

"The expenditure exceeded the income derived from all sources by upwards of 1300 lakhs of Rupees. The deficit of the present year was estimated at between 650 and 700 lakhs."

That statement displayed a perfect horror of details, and a singular indulgence in round numbers. The statement proceeded:—

"Reduction of expenditure in all departments is being made *as rapidly as possible*, but after this has been carried *as far as may be practicable* consistently with an efficient administration of the Government, it is feared that *for some time to come* the expenditure will be *in excess* of the income, the increase in the Public Debt alone, consequent on the large loans which it has been found necessary to take up during the last two years, both at home and in this country, *having added greatly to the* annual charges. Necessary Public Works *on a large scale, and others* which, though not of the same urgent necessity, are likely to prove productive at no distant date, and to add greatly to the prosperity of the country, require to be carried on; and *demands in the Department of Education*, which cannot be disregarded without serious injury to the people, have to be met.

"Further taxation, *therefore*, seems to be an unavoidable necessity, and the mode of taxation contemplated in the accompanying Bill seems to be open to few, if any, of the objections which apparently exist to many of the other schemes which have been suggested."

Not a word was said whether further taxation in addition to this Bill was contemplated, or what it was, and this was all the information given on which they were called on to legislate. The Honorable Member opposite (Mr. Harington) might smile, but he would beg leave to inform him that under the present arrangement the responsibility of passing these Bills rested with that Council, and it was the bounden duty of the Executive Government to give them a full, clear, and ample explanation of their measures, in order to enable them as Members of Council to discharge their duties in an honest and efficient manner. Looking at the way in which the present Bill had been changed—

THE VICE-PRESIDENT here observed that he did not think the proposed alterations could be treated as having been made. No Motion for the purpose had yet been made, nor did he think that it was competent to the Honorable Mover of the Bill to do so in its present stage. The Council therefore could only debate on the Bill in the form in which it stood at the first reading.

MR. HARINGTON was willing to withdraw for the present the amendments he had proposed.

SIR CHARLES JACKSON continued:—This Bill, though called a licensing Bill, appeared to him to be a modified income tax affecting particular classes only. But they did not know what were the ulterior intentions of Government. For aught the Council knew, Government might have an income tax in reserve, and an income tax and a license tax, such as this, would be most tyrannical and unjust, for trades and professions would have to bear both taxes, and the owners who derived their income from Company's Paper would only be liable to the income tax. It had dropped from the Honorable Member of the Executive Government that an income tax had been under discussion, but they had no clear statement of the intentions of Government for the future. The Bill as originally proposed appeared to be a sort of very mild income tax, but if, as subsequently suggested, they were to raise it by an assessment of three per cent., it would be a most severe one, and one which it would be very difficult to carry out effectually so as to make native traders equally liable. He could not however understand upon what principle all Officials, Judges, &c., and persons in Government employ, were to be exempt. As for the Judges, the point raised was that the Council could not possibly tax them, inasmuch as their salaries were fixed by an Act of Parliament. That might be a question in point of law with respect to the present frame of the Bill as a licensing Bill, but the difficulty might be avoided by making it an income tax. But why should the Civil and Military Officers of Government, and others receiving large salaries, be exempt? He could not for the life of him see any ground for exemptions which were preposterous in themselves and very invidious, considering the materials of which that Council was composed. He was certain the Bill would have to be greatly altered and modified in these and other respects before the Council could allow it to pass.

Then again the Honorable Mover said that the Government intended to cut the salaries of their own Officers. He (Sir Charles Jackson) himself very much questioned the justice of such a proceeding. He doubted whether the Government had any right to make any reduction in the salaries of parties who had entered upon their present offices and duties in the expectation of a certain consideration. It would be all very well to reduce the salary of an incumbent of the Office, but he thought Government should fortify themselves with an Act to impose such a deduction from the salaries of their Officers. Why should they not tax this class with the others, as was the case in England? The Honorable Mover said, the Bill had not been changed, but that he only intended to propose alterations in Committee. The Bill might not be changed in principle, but practically the alterations proposed would change a licensing tax into a somewhat severe income tax, and the income tax then imposed would only apply to certain classes of professions. He (Sir Charles Jackson) did not object to the second reading of the Bill, but he reserved to himself the right of opposing it at a future stage, if the principles of it, as it now stood, were not materially altered.

THE VICE-PRESIDENT said that, if he thought by referring the Bill to a Select Committee any time might be saved, he would not object to the second reading. But it appeared to him that such a course would rather delay the passing of the Bill, for, unless the Bill were very materially altered, he certainly could not vote for the third reading; and if the alterations proposed by the Select Committee should be of an important character, the Bill would have to be republished for general information. Thus there would be a delay of another three months. He thought therefore that, in opposing the second reading, he would rather be expediting the business than otherwise.

In the first place he wished to know the principle of the Bill. This, as he understood, was to license trades and professions, and it appeared that the highest income would not have to pay more than 2,000 Rupees yearly, and the lowest not less than 2 Rupees. To whom, however, was the classification to be left? Why, to the Collector, subject to the orders of Government. What those would be was not explained. Section XXVI provided—

"It shall be lawful for the Governor-General of India in Council from time to time to

make rules for the guidance of Officers in matters connected with the enforcement of this Act, provided such rules are not inconsistent with any of the provisions herein contained."

No principle was laid down for the guidance of the Collector in making the assessment. It seemed to be left entirely to the discretion of the Collector to assess some at 2 Rupees, others at 5 Rupees, others at 7 Rupees, others at 10 Rupees, and so on. There was nothing in the Act declaring that the amount of assessment should have reference to the amount of profits. In short, they were asked to pass an Act which left it to the Collector to do nearly as he pleased. It was true that the party could appeal, but then no rules were laid down for the Appellate Court. If there was no rule to guide the Collector, how was the Commissioner on appeal to say whether he was right or wrong?

Then again he saw no reason why a Banker should be taxed 2,000 Rupees, and another 1,000 Rupees, when the highest class for other traders, including Bankers also, was the third class, namely, 500 Rupees. The first two classes were confined only to Bankers. A man might carry on the business of a Banker, and make an annual profit of only 5,000 Rupees, and he might be assessed at 2,000 Rupees; whereas other traders (take Messrs. D. Wilson and Co. for instance) might make a clear profit of a lakh of Rupees a year, and yet not be taxed higher than 500 Rupees yearly. Why should this dead set be made against Bankers? They had been told that many Native Mahajuns made large profits, and contributed nothing to the taxes of the country. But this was not a sufficient reason for taxing them in a proportion higher than other trades. There was no reason why any person realizing large profits by any trade or profession, whatever it might be, should be excepted from the two first classes. If the Bill were to be confined to trades and professions, for what reason was a certain class to be altogether exempt? He would put it, why should the Chief Justice be exempt? Why should he not pay his 2,000 Rupees a year, as well as any one else? It had been said that the Council had not the power to tax the Chief Justice, because his salary was fixed by Act of Parliament, but he (the Vice-President) would say that, in his opinion, the Council had the power. He might however be alone in that opinion, but such it was. But even supposing that statutary salaries could not be taxed, he should not feel himself justified in taking advantage of such objection, and, whether assessed or not, would willingly pay the tax on his salary. He should feel it his bounden duty as a man of honor to do so, and not to claim any exemption whilst others around him were taxed. But he should not feel inclined to pay unless others were compelled to do the same. That was the feeling which he and, as he thought, most others entertained. When they saw the state in which the public finances were at present, he thought very few persons would object to pay a fair and moderate tax, provided it were general, and not confined to particular classes. The Honorable Mover had relieved him to some extent of the objections which he had felt to the Bill, by stating that the salaries of Government Officers, excepting certain classes, were to be taxed three per cent. simultaneously with the passing of the Bill.

It was proposed, independently of the Act, to tax Civil Officers at the rate of three per cent., but he did not clearly understand whether the tax was to be on the present salary, or on the reduced salary recommended by Mr. Ricketts. His principle would be to tax all equally and fairly. The Honorable Mover would however exempt all Regimental Officers, so that a Colonel or Major would be allowed to put all his salary into his pocket, while a poor man, making only about 100 Rupees per year, would have to pay a tax of 2 Rupees, that is at the rate of two per cent. Why was one to be taxed and not the other? The Subaltern said, his present salary was not sufficient. The poor man might say the same, and yet the latter, perhaps with wife and children, was to be taxed and not the former. This, as a matter of course, would give rise to endless discontent. The poor man would naturally say—"I am making only 100 Rupees a year and am taxed, and yet there is another drawing £1,000 a year, and he pays nothing." Such a pro-

ceeding was not fair. He should wish the whole country to see that they were taxing fairly and properly. In England no classes were exempt from the income tax. Every one there was taxed alike, except in cases in which his income was below a certain amount; and this should be the case in this country. The Honorable Member, in his Statement of objects and reasons, stated that, when the trader was taxed, the tax did not rest with him, but was really paid by his customer. Had the Honorable Mover forgotten the 20th Section:—

"Persons holding any offices or employments mentioned in Section XXII of this Act, shall be deemed to be, in respect of the salary, fees, wages, perquisites, and profits of such offices or employments, persons carrying on trade or exercising a profession within the meaning of this Act."

So that any Clerk in a merchant's office would have to pay something in respect of his salary. This might happen to any European Clerk who might have a wife and family to support, and he (the Vice-President) could see no sufficient reason why he should be taxed, whilst a Subaltern was to be exempt. If his income was less than that of a Colonel or Major, why should he be taxed more than they? He might say, the Colonel is earning more than I. He ought to be able to live within his income as well as I, and be able to pay three per cent. upon his pay as well as myself. He (the Vice-President) would prefer an income tax of say two, three, or four per cent. all round. He himself thought that three per cent. would be a very fair proportion, and he would suggest a classification to be as near as possible to a tax of three per cent. according to the income. It was very evident that some principle ought to be laid down.

Then again there was another class, the landholders under the Perpetual Settlement, who were not included. It might be said that, like Officers whose salaries were fixed by Act of Parliament, they could not be taxed. He admitted that it would be unfair to tell the zemindars that a particular tax was to be imposed upon them, and not upon others. But when the profits of official and professional labor were going to be taxed generally, he did not see according to what principle of justice they could be exempted from taxation. What he understood by the Perpetual Settlement was that the proprietors of land at the time of that settlement were allowed to hold their land for ever at a certain fixed rent or revenue which was never to be increased. If Government were to throw on that class a particular burden, they would be guilty of a breach of faith. He recollected having written a Minute some time ago, in which he stated that he thought it was contrary to principle to say that proprietors of estates which they held permanently should be compelled, at their own expense, to keep up a certain number of Police Officers and Chowkeydars, according to the value of their estates. But to say that zemindars could not be included in a general income tax was, in his opinion, going a step too far. With regard to the other Presidencies and the North-Western Provinces, perhaps a distinction might be made, for there the assessments could be increased by Government every twenty-one years. There was a difference in these two cases; in the one the rent was increased according to the improved trade of the country, but in the other, whatever benefit was derived went all to the proprietor, whose rent was always at the same rate. What would the zemindar do if there were no Military, if there were no trading vessels, if no Navy were kept up, and there were no traders or merchants? The increased Military had thrown an additional burden on the country, and the zemindars as well as others had the benefit of the protection afforded. It was said—"throw the burden upon trades and professions, but don't tax the zemindars." It might or might not be politic to tax the zemindars, but it appeared to him that they could, without any breach of faith, be compelled to bear an equal proportion of the tax according to a fair valuation of their net income.

He thought that Regimental pay ought to be taxed as well as the salary of the Clerk who had not the same means as the trader to realize it from his customers.

As this Bill at present stood, there were many persons drawing large salaries who could not be taxed higher than at the rate included in the third

The Vice-President

class. For example, he would put the case of the Secretary to the Bank of Bengal whose salary was something about £3,000 or £3,500 a year. Why should he get off so cheaply as by paying only Rs. 250 per annum? Why should he pay so little, when it was proposed that Civil Servants should be taxed at the rate of three per cent. upon their salaries?

Then with regard to professional persons, why tax medical men, not being Government servants, who came out to this country to set up for themselves, and whose income for the first two or three years was very small, and not Military Surgeons? Barristers too had to struggle for many years before they could realize any thing approaching the salaries of some of the Civil Servants, and it was proposed to subject them to taxation, whilst the Regimental pay of all Military Officers, some of whom were better able to bear it, were to be exempted.

With regard to the Appeal Clause also, he did not see how the Act would work. Take the case of a man whom the Collector had assessed and placed in a certain class. The party taxed was dissatisfied and appealed to the Commissioner, but how was the Commissioner to decide? And how could he ascertain the merits of the appeal? He had no power to summon witnesses, or to compel the production of books; and even if the parties to be assessed should appear before him, he had no power to compel them to give evidence. Even supposing that he should ascertain the amount of net income, if he had no principle to guide him, how was he to act?

Under these circumstances, he would suggest to the Honorable Member the expediency of withdrawing this Bill, and of introducing another with respect to which the Council would know how to act. If the Honorable Member pressed the Bill in its present form, he (the Vice-President) would consider it his duty to oppose the second reading, unless the Honorable Member consented to refer the Bill to a Select Committee for the purpose of being amended before publication.

If it should be read in its present state and published, he thought that great delay must necessarily be occasioned by republishing the Bill.

MR. LEGEYT said, he came here today with no intention of opposing the Bill, though he would not deny that he saw it was full of difficulties. What he had heard that day in Council had shown him that those difficulties were greater than he at first supposed. If, however, the Honorable Mover was prepared to carry it through, and if he was sufficiently prepared to meet the difficulties as to the details, and would make the alterations he had suggested, he (Mr. LeGeyt) should not feel justified in opposing the second reading. If it did pass the second reading, it might in Committee be so altered and modified that they would find it necessary to republish it, and then the delay would arise which had been foreseen by the learned Vice-President. It was no doubt the object of every Member of this Council to assist the Government in their present difficulties in respect to finance, and he should feel he was wanting in his duty if he opposed, without the gravest reason, any measure that would tend to assist it at the present crisis. But he could not help hoping that the further consideration of the Bill would be deferred to enable the framers of it to consider the objections which had been brought forward and to make such modifications and alterations as would meet those objections, some of which, such as the absence of any specified principle on which the different classes were to be formed, appeared to him to be absolutely necessary to the working of the Bill. If this were secured, he should support the Bill.

MR. HARINGTON said, he was of course most anxious to defer to the wishes of the Council; but with regard to the suggestions which had fallen from the Chair, or rather he might say the second of those suggestions, for he certainly should not withdraw the Bill, though Honorable Members might of course throw it out if they thought proper, he should like to have a little time to consider it, and he should therefore move that the debate be adjourned until the next meeting of the Council. Before making this Motion, however, he desired to offer a few observations in reply to the objections which had been taken to the Bill. These objections resolved themselves

into objections of principle and objections of detail. With regard to the objections falling under the latter head, he had distinctly stated in the remarks with which he introduced the Bill, that he had no intention or wish to bind Honorable Members to any of the details of the Bill. He had admitted that the Bill was no doubt chargeable with many imperfections; but these he hoped would be remedied in Committee. As remarked by the Honorable Member for Bengal, and as he himself had said, many valuable suggestions and much good advice might be expected to be received on the publication of the Bill from all parts of India, as well from the Officers of Government, as from others, which would prove most useful when the time for considering the Bill in Committee arrived.

With regard to the objection of the Honorable and learned Vice-President, that there was nothing in the Bill, as now drawn, to show how the Officers, whose duty it would be to assess persons under it, were to administer the law, he had acknowledged that the rule laid down might be considered vague and indefinite, and he had also said that he was quite prepared to adopt any proposition which the Council at large might make to meet this objection. He did not think that any mere alteration of that kind would change the principle of the Bill, so as to render a republication necessary before it was read a third time and passed. The greater part of the Bills brought into that Council underwent material alterations after being read a second time, either at the hands of the Select Committee, or when before a Committee of the whole Council, and he could point out Bills, the form of which had been completely changed in this way. If the Select Committee, to whom the Bill would be referred, proposed that the duty to be charged on licenses should be generally at the rate of about three per cent. on the profits or emoluments of the party taking out the license, a rule to that effect, which would be restrictive in its character, would not, he thought, alter the principle of the Bill. But if the maximum rate was considered too low, and it should hereafter be proposed to raise the rates, that would undoubtedly necessitate the republication of the Bill before it was read a third time. It was on that account that he had asked the Council to allow him at once to add three higher classes, but he withdrew the application as soon as he found that Honorable Members opposite considered it objectionable, and he was very willing that the Bill should be read a second time in the form in which it had been introduced.

The Honorable and learned Judge opposite (Sir Charles Jackson) had characterized the exemption of Government Servants from the operation of the Bill as most preposterous. It would have been so if it had been proposed to impose an income tax; but that was not the character of the Bill, and he (Mr. Harington) did not see how Government servants could properly be included in a Bill for licensing trades and professions. Was the Governor-General of India to take out a license before he could exercise the functions of his high Office? Was the Honorable and learned Chief Justice, or were the Judges of the Sudder Courts, to take out a license before they could be allowed to sit on the benches of those Courts? Was the Bishop of Calcutta to be required to take out a license before he could preach in his own Cathedral?

With regard to salaries fixed by Act of Parliament, he deemed it sufficient to observe that the Government had been advised by those who were the legal advisers of the Government on questions of this nature, that neither the Government nor the Legislature of this Country could interfere with the salaries so fixed with a view to reduce their amount. The Government might of course have consulted the Honorable and learned Judges of Her Majesty's Supreme Court also, the point at issue involving the construction of an Act of Parliament, but they had not considered it necessary to do so. The Honorable and learned Judge opposite (Sir Charles Jackson) had expressed a doubt as to whether the Government could, by a mere order or resolution, legally carry out their intention of reducing the salaries of their servants other than those whose salaries were fixed by Act of Parliament by a percentage, and he gave this as a reason why those servants should be included in the Bill. He (Mr. Harington) could not agree with

the Honorable and learned Judge. Supposing the Government were to direct that, from the 1st January next, all official salaries under their control should be reduced by one-half, who, he would ask, could prevent the Government from carrying this order into effect? He (Mr. Harington) had no doubt that every Officer in the country, knowing the state of the finances, and that what was now proposed to be done was a matter of urgent necessity, would follow the excellent example of the Honorable and learned Vice-President, and cheerfully surrender, as the Honorable and learned Vice-President had expressed his intention of doing, what was proposed to be taken from other persons; but if any Officer was unwilling to serve the Government on a reduced salary, he had the remedy in his own hands—he could resign. It being then fully within the competency of the Government to make whatever reductions it pleased in the salaries of its own servants, unless they were protected by Act of Parliament, he submitted that no law was required for the purpose. It was unusual to have recourse to legislation for an object which could be equally well effected without it.

On the question raised by the Chair as to the liability of the Zemindars of Bengal to further taxation, he was not prepared to express a decided opinion; but he must say he was greatly surprised at what had fallen from the Honorable and learned Vice-President on that subject.

The Honorable and learned Vice-President had referred to a Minute which had been recorded by him, when a Bill to amend the law relating to the appointment and maintenance of Police Chowkeydars in Bengal was proposed by a former Honorable Member for Bengal. That Minute had been printed, and a copy of it was in the hands of every intelligent Zemindar in Bengal. From this Minute he (Mr. Harington) would read some extracts to show what was the opinion of the Honorable and learned Vice-President at that time on this most difficult question. He said:—

"It is clear that, according to the engagement entered into at the time of the Permanent Settlement, the jumma then fixed cannot be altered. It was declared by the Governor-General in Council that the Zemindars and other proprietors of land and their heirs would be allowed to hold their estates at such assessment for ever (See Regulation I. 1793 Section IV), and that the orders fixing the amount were to be considered irrevocable and not liable to alteration by any persons whom the Court of Directors might appoint to the administration of the affairs of the Company (Section VII). At the conclusion of the Permanent Settlement the Governor-General in Council expressed his confidence that the proprietors of land, sensible of the benefits conferred upon them by the public assessment being fixed for ever, would exert themselves in the cultivation of their lands, under the certainty that they would enjoy exclusively the fruits of their own good management and industry, and that no demand would ever be made upon them for an augmentation of the assessment in consequence of the improvement of their estates."

The words "public assessment being fixed," "under the certainty that they would enjoy exclusively," "and that "no demand would ever be made," were italicised by the Honorable and learned Vice-President in the Minute, in order to draw particular attention to them. He then went on to say—

"The same principle which prevents an augmentation of the assessment equally precludes the taxation of the owners in respect of the rent or produce of their estates; such taxation must necessarily prevent them from enjoying exclusively the fruits of their own good management and industry."

And that his meaning might not be misunderstood, he proceeded to illustrate what he had just stated—

"Suppose," he said, "a Zemindar pays a fixed jumma, say of ten thousand Rupees a year, for an estate which at the time of the Settlement produced eleven thousand a year clear, that being the rate of assessment mentioned in Regulation II. 1763.

"The Government cannot raise his jumma ten per cent.; but if they tax his rents ten per cent. they do him a greater injury than if they were to increase his jumma ten per cent.; for, in the one case, assuming the lands to remain in *statu quo*, they compel him to pay eleven hundred Rupees, in the other only one thousand Rupees.

"Suppose that, by good management, or the expenditure of capital, the lands are improved, and that the estate which produced eleven thousand Rupees a year in 1793, and for which the jumma was fixed at ten thousand

Rupees, now produced fifteen thousand Rupees."

There was nothing here to indicate that what was said by the Honorable and learned Vice-President was said in a limited sense, or in reference to any particular tax. The words were as general as they could possibly be, and were of universal application.

Now he (Mr. Harington) did not mean to say that, in giving the opinion just quoted, the Honorable and learned Vice-President was right. But if he were so, and the Government were really precluded by the terms of the perpetual settlement from taking away, by any means, any part of the rents or profits of the Zemindars of Bengal (for the rents of the land were their profits), what right, he would ask, had they to impose an income law upon those persons? He begged it to be understood that he did not say he agreed with the Honorable and learned Vice-President. In fact, he would admit that he had not made up his mind upon the point, nor did he mean to say that the Honorable and learned Vice-President could not change his opinion; he had a perfect right to do so, but still the opinion which he had formerly given would always be quoted in favor of the exemption claimed.

From what he had just said it was manifest that, had a general income tax been proposed, the question as to whether it could be legally imposed upon the Zemindars of Bengal must have been raised, and from them it would have been necessary to go to the Maafeedars or holders of rent-free-estates, and the Zemindars in the North-Western Provinces and in Madras. But, as he had observed on a former occasion, the Government could always increase its demands whenever an estate, not permanently settled, came under revision of settlement, and no fresh law was required to enable it to do so. It seemed however to be generally admitted that both at Madras and in the North-Western Provinces the lands were assessed at as high a rate as they could bear, and that if the settlement were raised the Zemindars would be unable to pay their revenue, and the consequence would be that many estates would come into the market, thus increasing the number of alienations which many were so anxious to prevent.

If the present Bill passed, it would not prevent any Honorable Member, who thought proper, from introducing a Bill for imposing a general income tax; and were such a Bill brought in, he (Mr. Harington) would give it his best consideration, though, before it could pass, it would be necessary to determine many difficult questions not involved in the present Bill. The Honorable and learned Judge opposite (Sir Charles Jackson) seemed to think that, should the Government hereafter propose a general income tax, it would operate with great hardship towards the parties who would be required to take out licenses under the Bill before the Council, but he could not conceive that any Honorable Member would consent to those parties being subjected to both taxes. Having offered these remarks, he begged to move that the debate be now adjourned.

THE VICE-PRESIDENT desired to say a few words in explanation with reference to the Minute from which the Honorable Member had just read. That Minute was written upon the question then before the Government, namely as to the right of Government to impose upon the landholders, and upon them alone, an additional burden in respect of their lands, by compelling them to maintain a Police Force. He might not have been sufficiently explicit, but that Minute had reference to the subject then under consideration, and not to the question of including them in a general income tax. If Government were precluded from including zemindars in any measure of general taxation, it might be concluded that it precluded Government from levying a duty on the exportation of rice produced in lands held under the Perpetual Settlement.

After some further discussion, the further consideration of the Bill was adjourned.

NATIVE PASSENGER VESSELS (BAY OF BENGAL).

MR. FORBES moved the second reading of the Bill "to prevent the over-crowding of Vessels carrying

Native Passengers in the Bay of Bengal."

The Motion was carried, and the Bill read a second time.

ARMS AND AMMUNITION.

MR. HARINGTON moved the second reading of the Bill "to make perpetual Act XXVIII of 1857 (relating to the importation, manufacture, and sale of Arms and Ammunition, and for regulating the right to keep or use the same)."

SIR CHARLES JACKSON said, he rose for the purpose of opposing the second reading. This was a Bill which affected the right of Europeans to keep Arms for self-protection without a license. Really he thought that, after the experience of the years 1857 and 1858, Government had had a sufficient lesson not to deprive the European Community of the means of self-defence. Considering that the Europeans were a small dominant class compared with the large Native population, and many of them residing in isolated districts, it was absolutely necessary that they should have the means of protecting themselves. The reason assigned for depriving them of arms was that it would be invidious to make any distinction between Europeans and Natives, and that in this country it was particularly dangerous to do so. Now he did not wish to be misunderstood. He was as anxious as any one that the Natives should be kindly and paternally governed, that they should enjoy absolute personal freedom and as much political freedom as they were fitted for or could be trusted with; but it was cant, nay more, it was mere hypocrisy to pretend that we shrunk from making invidious distinctions between Natives and Europeans. In point of fact we made that distinction between the two classes constantly. Why were not Natives allowed a seat in this Council or in the Sudder Court? Why were they debarred from holding many other important Offices in this country? The reason was that Natives were not as yet thought fit to be trusted with powers now exercised exclusively by Europeans. He put his objection to this Bill on the same principle. The Government had come to the conclusion (he thought rightly) that the Native Community generally were not fit to be trusted with Arms, but the same reason did not apply to Europeans, for there was no pretence for saying that they would use their Arms against the Government. He thought, therefore, that the argument, that it was invidious and impossible to draw a distinction between Natives and Europeans, was quite fallacious.

But the Bill was a specimen of a double hypocrisy in itself, because, although it professed not to exclude Europeans from its operation, it nevertheless imposed on the Government the power of dispensing with its provisions as regards Europeans, and we all knew that the Act we were called on to renew had only been worked under this Clause, and Government had nowhere attempted to bring Europeans within its provisions. What was the use, therefore, of provisions imposing restraints on the use of Arms by Europeans, when the real intention was to dispense with those provisions in practice, and allow Europeans the use of Arms?

For these reasons it appeared to him that the Bill was founded on no correct principle as applicable to this country.

MR. SCONCE said, he entertained objections of another kind to this Bill. To describe his idea of the Bill generally, it was a Bill to make perpetual a law passed at the time of mutiny and internal commotion, which was constructed for a temporary purpose, and did not bear the character of a permanent enactment. One of the most material Clauses in it was Section XXIV, which provided for a general search for Arms and Ammunition, wherever Government thought fit to order. Now supposing a search to have been made, how was it to be followed up? How would the result be secured? And when a search was once made, would the Bill authorize a second or a third search?

Further, he observed that the earlier Sections of the Act proceeded upon a different principle from that embodied in Section XXIV. This Section authorized a general search and seizure; whereas the object of Sections I and II was to require persons to give notice of the Arms held by them, and upon the delivery of a certificate or license

to retain the Arms so held. Section IV, it was true, provided for the seizure and detention of Arms for such time as might be deemed necessary: nevertheless, the principle of the earlier Sections of the Bill appeared to be to license the possession of Arms, and it seemed to him that it might be desirable to bring these Sections more in conformity with the provisions by which, under Section XXIV, a general search had been or might be made.

His view therefore would be to pass the Bill to a second reading, and then refer it to a Select Committee; but it seemed to him that the deliberations of the Committee would be materially assisted if they were informed as to the extent to which the powers given by the Act had been exercised. It was desirable to learn in what Districts, under Section XXIV, a general search had been made, and what result had followed from it. Knowing such points as these, the Council would be better able to determine how to provide for the future possession of Arms.

Again, he would remark that considerable apprehension was expressed as to the mode in which the power conferred by Section XXV of the Act was exercised. By this Section any person who refused to produce Arms was liable, on conviction, to imprisonment not exceeding two years. Subsequently Act XI of 1858 provided that, in lieu of the penalty of imprisonment, a fine might be imposed, and in lieu of fine corporal punishment. That is, as he understood, on the discovery of Arms which any person, in whose possession they were discovered, refused to produce, that person might, in the first instance, be fined, and then, on failure to pay the fine, might be flogged. Now there appeared to be reason to fear that the process contemplated by the laws was reversed, and that men were flogged that they might be made to produce their Arms, and not flogged after the Arms had been found. With the permission of the Council he would read an extract from the *New Times* newspaper, published at Allahabad, which bore upon this subject. It was there said:—

"In our last number we made some hurried remarks, occasioned by circumstances which had come to our knowledge, upon the discontent produced among the populations of these Provinces by the Disarming Act. We should perhaps have explained at the time that the objection is less to the Act itself, the principle of which has been put in practice with success elsewhere, than to the manner in which it is enforced. We know, and it is well known to many, that the Act is made a pretext for the grossest cruelty and extortion, and that deeds are daily committed in the name of the British Government which would be sufficient to render any Government detested. We need scarcely add that these deeds are committed by Native subordinates, and in violation, not in aid, of their duty. It is one thing to take Arms, wherever they can be found, by the fair exercise of authority; but it is quite another thing to extort them by the most brutal means from the poor and inoffensive, and to allow the rich and designing to retain them for the next opportunity that may arise for their use. The readers of Uncle Tom's Cabin all thought it monstrous that poor Topsy should be compelled by ill-treatment to declare herself guilty of an offence which she had never committed, because she thought she was required to confess something; but it is quite as bad that men should be compelled even to purchase weapons in order to give them up, and make for their tormentors an appearance of zeal and honesty, when they have in reality been guilty of nothing but cruelty and fraud."

From other sources he had heard that the general seizure of Arms was attempted to be enforced by violence, which the law, as he understood it, did not countenance; and he should be glad if some information were communicated to the Council as to the mode in which convictions were pronounced and corporal punishment inflicted within or beyond the provisions of Section XXV Act XXVIII of 1857 and of Act XI of 1858.

Mr. LEGEYT said, he did not rise with the intention of opposing the second reading. But he proposed, if it was carried and referred to a Select Committee, to instruct the Select Committee to make enquiries and obtain information how those portions of the Act relating to the search and seizure of Arms had worked. He had heard, and from authority he could not question, that the powers created by this Bill had been grossly and cruelly exercised. It might be said that there was no chance of such misfeasance occurring again. But it might occur, and he thought that no Bill of this kind should be passed without containing stringent provisions to restrain such abuses. This

might be done in Select Committee, and he would not therefore oppose the second reading. But if it was not provided for in Select Committee, he reserved to himself the right to raise this question again in a Committee of the whole Council He hoped that the publication of the Bill would elicit information which would enable them better to determine whether any measures and what measures should be adopted to prevent the possibility of the occurrence of such abuses as had been pointed out

THE VICE-PRESIDENT said, it was not his intention to oppose the second reading of this Bill, because he thought that, on the publication of the Bill, it would not be necessary for the Select Committee to make it more stringent than it then was, and the Council would have it in its power to except Europeans from such of the provisions of the Bill as they might think proper He thought himself that Europeans should be excluded from some of its provisions, but not from the whole They might very reasonably be prohibited from the sale or manufacture of Arms, except under the provisions of the Act, but the provision authorizing a Magistrate to seize Arms in the possession of any person, if in his judgment they could not be left in his possession without danger to the public peace, was taken from an Act which was passed for Ireland In the debate upon that Bill strong opposition was shown to such a provision even in Ireland, but it was wholly inapplicable to Europeans in the existing state of circumstances in India. It was not probable that Europeans would use Arms against the Government, and there was therefore no necessity for including them in that Clause, on the contrary, their numbers were so small compared with the Natives, and their position in many cases so isolated, that it was necessary to allow them to retain Arms for self-defence. With regard to other Clauses however, such as those which related to trading and dealing in Arms and Ammunition, it was very necessary that Europeans should be subject to this Bill as well as any one else, and they should be compelled to keep their books open for inspection at any time, so that Government might always know to whom they were selling Arms, or the nature of the traffic they were carrying on in Arms With reference to the general Clause to which the Honorable and learned Judge (Sir Charles Jackson) had objected, he (the Vice-President) would mention that, when the Act was extended to Shahabad, Europeans and Eurasians had been excepted by Government If Government thought it necessary to exempt them there at that time, he thought that the Council now, in making the Act a permanent law of the land, ought to introduce an exemption of that sort into this Bill

In conclusion he desired to suggest that, considering the nature of the subject, the Act itself should be published *in extenso*, together with the Bill which proposed to make it perpetual, so that the public might have an opportunity of sending in any objections they might have to any part of the Act

MR HARINGTON said, he was quite willing to accede to the suggestion which had fallen from the Chair if the Standing Orders of the Council admitted of the Act, which it was now proposed to make permanent, being published in the Gazette, along with the Bill which had been introduced for that purpose He could have no objection to the fullest discussion of the subject. It was quite proper that the public should know what the provisions of the existing law were, and that they should have every opportunity afforded them of stating their objections to any parts thereof

The Honorable and learned Judge opposite had opposed the second reading of the Bill, on the ground that it did not exempt Europeans; he said that he should have supposed that there would have been some reluctance on the part of Government to make the law applicable to that class of its subjects. But looking to the time when the Act was passed, namely, during the height of the mutinies, when the life of every European in the country was in danger, it appeared to him (Mr. Harington) that if the exemption now claimed for Europeans was proper, it should have been made at that time, and not having been allowed then, it could scarcely be permitted now when the circumstances of the country were so

different. At the time Act XXVIII of 1857 was passed, he (Mr. Harington) had not the honor of a seat in this Council, nor had the Honorable and learned Judge opposite (Sir C. Jackson), or the Honorable Members for Madras and Bengal, or the Honorable and gallant Member on his left (Sir James Outram); but the Honorable and learned Vice-President and the Honorable Member for Bombay had given their assent to the Act in its present form. For himself he should be very glad if the Council could with propriety say that the Act should not extend to Europeans; but he did not see on what ground the exemption could be put without making a most invidious distinction. Honorable Members had no doubt heard that large bodies of "lattials" or clubmen were sometimes kept up by Europeans in Bengal, in order to maintain by force what they considered to be their rights, and that battles frequently took place between the clubmen of one party and the clubmen of another party. He himself recollected to have seen a letter written by one Indigo Planter to another, in which the writer threatened that, unless certain parties discontinued to cultivate a particular piece of land, "he would plough their backs with pepper and salt." Surely that was not a state of things which should be allowed to continue. If this law were to pass, and Europeans were exempted from its operation, it would be very easy for any European to keep arms for his followers who could not themselves keep them, and thus to have an armed mob always at his disposal for any purpose, lawful or unlawful.

The Honorable Member for Bengal had said that particular parts of the Act had been abused, and he had read an extract from a Newspaper to show that such had been the case. But they were not told that the Act had been abused in respect of Europeans. Then on what grounds could they, with any degree of consistency, continue the law for Natives but not for Europeans? There were the learned Clerk of the Council and the learned Clerk Assistant, the one an English Barrister, the other a Native Barrister. How could the Council with propriety say that the law should not extend to the former, but that it should extend to the latter? He (Mr. Harington) was at a loss to discover any sufficient ground for making such a distinction. There were many other Native gentlemen who, if Europeans were exempted, ought also to be exempted. He must therefore repeat that, in his judgment, no exception in favor of certain classes could be made in the law without doing injustice to other classes. If, however, the Council would allow the Bill to be read a second time, the subject could be fully discussed in Committee. He certainly had no disposition to throw any obstacles in the way of such discussion. The objections taken by the Honorable Member for Bombay and the Honorable Member for Bengal were not against the principle of Act XXVIII of 1857, but to the manner in which that Act had been worked. No law however was ever passed which might not be abused, particularly in this country, but the abuse of a law furnished no ground in itself for its repeal, though it might render some additional provisions necessary and proper to prevent similar abuse for the future. The Code of Civil Procedure lately passed by the Council might be and no doubt would be abused; so also the new law of limitation; and the same might happen in respect of the new Penal Code and the new Code of Criminal Procedure when they should become law, but this would be no reason for repealing them. He (Mr. Harington) had not seen the paper from which the Honorable Member for Bengal had read an extract, but he could say that there was no disposition on the part of the Government to screen its Officers who might be guilty of acts such as those complained of, and it was only the other day that, on its coming to the notice of the Government, that some degree of violence had been used to compel a party to deliver up arms supposed to be in his possession, a most severe reproof was administered to all concerned.

He did not know that he could say anything more in support of the Bill, and, it only remained for him, to press his Motion for the second reading.

SIR JAMES OUTRAM said, no one could feel more grateful for the services rendered by his countrymen during the late troubles than he did. But he

could not assume even for Englishmen that they were immaculate, and that some among them might not commit gross excesses if allowed the unrestricted use of Arms. He thought that the Honorable and learned Judge opposite (Sir Charles Jackson) himself had lately had to try more than one European brought down from the Mofussil, who had grossly misused weapons in their hands. He therefore thought that it was but right to prevent the recurrence of such cases by investing Magistrates with the power of disarming, at their discretion, any such persons as they might consider unfit to be trusted with dangerous weapons. This Bill did not prevent every European from possessing Arms. It was made to meet the case of all classes of our subjects, and, as he understood, it would seldom be enforced against Europeans, and the Governor-General had the power of exempting any respectable and trustworthy person from its operation. The Bill was intended to be enforced only against those who might be considered dangerous characters.

SIR CHARLES JACKSON said, he would observe only, by way of explanation, that the cases referred to by the Honorable and gallant Member were cases of private injury which the ordinary law was sufficient to take cognizance of and repress. This, however, was a political question, and looking at it in that view, it was impossible to say that Europeans would use Arms against the Government.

The Motion was carried, and the Bill read a second time.

MALABAR OUTRAGES.

MR. FORBES moved that the Council resolve itself into a Committee on the Bill "for the suppression of Outrages in the District of Malabar in the Presidency of Fort St. George," and that the Committee be instructed to consider the Bill in the amended form in which the Select Committee had recommended it to be passed.

Agreed to.

Sections I to VIII were passed as they stood.

Section IX proposed to render liable to fine, not only the inhabitants of the Umshum to which the perpetrators of a fanatical outrage belonged, or in which they resided at the time of the commission of the outrage, but also the inhabitants of the Umshum within which the outrage was committed.

MR. SCONCE said, he wished to state shortly the grounds of the objection which he had taken in Committee to two lines of this Section. The lines to which he referred were lines 18 and 19, and they were in the following terms:—"and also within the Umshum in which the outrage shall have been committed." That is, as he understood the Section, supposing the Umshum in which an outrage was committed to be at any distance from the Umshum to which the perpetrators belonged, or from which they had come, although the residents of the former Umshum might be perfect strangers to the perpetrators of the outrage, and quite ignorant of their intention to commit the outrage, nevertheless they would be liable to fine. He observed that this provision was stated to have been recommended by the Madras Government on the suggestion of Mr. Frere, the Sessions Judge of Tellichery. But he (Mr. Sconce) submitted that the provision was not in accordance with the intention of Mr. Frere's proposition. Mr. Frere said—

"I should also be disposed to recommend that the provisions of Section VII Act XXIII of 1854 should be extended to the Umshum or Umshums in which the crime may have been committed, as well as those in which the criminals may be resident, whenever it may be ascertained, from presumptive evidence or otherwise, that the crime was perpetrated with the knowledge and consent of the Mopla inhabitants of the neighborhood."

Unless, therefore, an amendment were made requiring proof equivalent to reasonable presumption that the residents were cognizant of the intended outrage, he (Mr. Sconce) should move the omission of the words referred to.

SIR JAMES OUTRAM said, he quite concurred with the Honorable Member for Bengal in objecting to the intrusion of the words in question. It appeared to him an exceedingly stringent measure to make a community answerable for a crime committed by strangers, and of which they might have had no cognizance. He thought that

what Mr. Frere intended was that such a measure should be had recourse to only when there was presumptive evidence of the complicity of the residents of the Umshum in which the outrage was committed. Moreover, the former Act was more stringent than the provisions in force in any other part of India. That Act had been in operation for about four years, during which period it had proved efficacious so far that there had been no further outrage.

MR. FORBES said, the Honorable and gallant General had remarked very truly, that since the present law had been in operation no fanatical outrage had been committed by the Moplas. But the district of Malabar had always been subject to periodical fits of fanatical outrages and to periodical fits of peace. There would be no outrages for years, and then one would suddenly break out. But because no outrage had been committed since Mr. Conolly's murder, it was yet too soon to argue that the Act had been completely successful, and that no change in its provisions was necessary. He must further remind the Committee that the words now objected to were no new provision of law; they were simply a slight extension of a provision of law which had already received the sanction and approval of the Council. In an earlier part of this very Section it was enacted that—

"It shall be lawful for the Magistrate, with the sanction of the Governor in Council, to levy such sum of money as the Governor in Council shall authorize, from all the Moplas within the Umshum or the several Umshums to which the perpetrator or perpetrators, or any one of such perpetrators of such outrages, shall be found to belong, or wherein any such perpetrator shall have been resident at the time of the commission of the outrage, and also within the Umshum in which the outrage shall have been committed."

These words, now inserted in the Bill, and objected to by the Honorable Member for Bengal and by the Honorable and gallant gentleman, involved no new provision of law, but merely extended to the inhabitants of a village in which a fanatical outrage was committed, the same provisions of law as were already applicable to those residing in the village to which the perpetrator of the outrage might belong.

Then again the Honorable and gallant Member seemed to be under the impression that this provision was quite unknown in any civilized country, but he (Mr. Forbes) took leave to inform the gallant gentleman that, so far from that being the case, the principle embodied in this Section had been introduced in Ireland by the Peace Conservancy Act of 1856, and that the Executive Government of that country had power to quarter a Police Force in any village in which a violent crime had been committed, and to collect from the inhabitants of such village the sum required for the payment and expenses of the Force. In the papers laid before the Council with this Bill would be found evidence of this fact, and, with the leave of the Committee, he would read what would support the assertion he had now made. The extract was taken from the *Times* newspaper of the 2nd November 1857, and related to the murder of Mr. Ellis, then lately perpetrated—

"An extra constabulary Force of about twenty men, commanded by a vigilant Inspector, have been sent to the locality, and the charge, about £800 per annum, must be paid by the neighboring inhabitants, under the Peace Preservation Act of 1856. The provision of the Statute which imposes this heavy penalty is but a renewal of the law of Alfred, which made the hundred answerable for any felony committed within its circuit, unless hue and cry were made, and the felon detected and brought to justice; but the Peace Preservation Act gives the Lord Lieutenant power to allocate the charge so as to exempt the innocent and place it on the shoulders of those who have connived at the crime or sympathize with the criminal. In many instances the pressure of the tax has coerced the peasantry to give the murderer up to justice."

Such was at present the law in Ireland whenever a single murder was committed, but where, even in Ireland, had there been a case of a whole family of fifteen persons being murdered in one night with the consent of the community generally in the neighborhood where the murder was committed? Such cases had occurred in Malabar, and was it to be said that a law which might be passed to prevent individual murders in Ireland could not be tolerated for the prevention of wholesale butcheries in India?

Sir James Outram

Facts were not wanting in support of the words now objected to. In the case of the sanguinary outbreak which took place at Mattanoor in 1852, in which a substantial Brahmin landholder and his entire family, fifteen persons in all, were murdered in one night, the perpetrators came from a distance, but it was well established that the murder was committed with the perfect knowledge and consent of the Mopla community in the neighborhood where the crime was perpetrated, and some of them were, in fact, convicted and punished as accessories. Besides this there was the case of Mr. Connolly, the Collector and Magistrate, and representative of Government in the Province, whose intended murder was certainly known to scores of people for some time before the crime was perpetrated.

The Madras Government, in expressing their approval of the present Section, observed :—

"It is possible that the inhabitants of the Umshum in which the perpetrator of an outrage resides may not be aware of the intended crime. The plan may be, and not unfrequently is, formed by persons at a distance, and the individual selected as a fit agent may be called away secretly to the scene of outrage where he may be detained awaiting a suitable opportunity. That he is there for such a purpose can hardly fail to be known to the Mopla inhabitants of that Umshum. This was actually the case as respects the Moplas of Calicut, on the occasion of Mr. Conolly's murder."

He (Mr. Forbes) thought that sufficient ground had been shown for the stringency of the proposed clause to which objection had been taken. It must be remembered, moreover, that the provision was not obligatory on the authorities, but was to be enforced at the discretion of the Magistrate with the sanction of the Governor in Council. Considering therefore the desperate character of the Moplas, the nature of the outrages committed by them, the fact that there was now in force in Ireland a law precisely similar in principle to that now proposed, and that the clause objected to was not after all new, but was a provision already sanctioned by the Council, he did not think that this Council would refuse to give weight to the opinions of the Government of Madras and of the local Officers of the Province, on whom rested the responsibility of maintaining the public peace, and who concurred in the necessity for the proposed provision.

On these grounds he should go to a division on the amendment proposed by the Honorable Member for Bengal.

MR. SCONCE'S Motion was then put and negatived, and the Section was passed as it stood.

Section X provided a penalty for Moplas refusing to deliver up an offender.

MR. SCONCE said, this Section provided a penalty to be inflicted under three different sets of convictions. It empowered the Magistrate to call upon three classes to deliver up the perpetrator of an outrage, and, on their failure to do so, to levy a fine from them. The first of these classes were the residents of the Umshum to which the perpetrator belonged. A man might belong to one Umshum, and yet have fled to another. He might commit a murder fifty miles to the north, and flee to an Umshum fifty miles to the south, and it would be hard to compel the inhabitants of an Umshum at a distance of a hundred miles to deliver him up.

The next class were the inhabitants of the Umshum wherein the perpetrator resided at the time of the commission of the outrage, and necessarily objections similar to those he had just expressed applied to this second class of cases. Altogether it appeared to him beyond every just principle to propose a law which should impose an obligation of that character.

The third class were the inhabitants of the Umshum where the prepetrator might be found after the perpetration of an outrage, and to this he saw no objection, if it be so expressed, as indeed the word "found" seemed to imply, that proof was adduced to show that a person charged with committing an outrage had fled to the Umshum of which the inhabitants were required to produce him.

He would further observe that this law was introduced at the instance of the Acting Magistrate of Malabar, who said that—

"The Magistrate should be empowered to call on the principal Mopla inhabitants of the parish to which the fanatics belong, as well as of that part of the country in which they are found, to seize and deliver them up, dead or alive, to him; in the event of their failing to

do so, and on proof of their having evinced sympathy with fanatics, that the provisions of Act XXIII of 1854 shall be applicable to them."

Unless, therefore, it could be shown that the perpetrator of an outrage had, after the commission of an outrage, fled to an Umshum the inhabitants of which were cognizant of the same, it would scarcely be proper to impose the obligation upon them. For these reasons he begged to move the omission of this Section.

SIR JAMES OUTRAM said, he begged to support the Honorable Member's Motion. The Section under consideration was one which it was proposed to add to the former law, and as that law had, after a practical operation for four years, been found quite sufficient for the purpose for which it was intended, he saw no necessity for any additional provision of greater stringency.

Mr. HARINGTON said, he thought that the Honorable Member for Bengal and the Honorable and gallant General (Sir James Outram) had treated this Section as if the rule contained in it were imperative and left the Magistrate no option, whereas it was permissive only. He could not suppose that the rule would be enforced in every case, but only in those cases in which the Magistrate might consider its application just and proper. The whole Bill was an exceptional one. No doubt it was a great misfortune to a Mopla, who was a good man, to belong to a class for which a law of this kind was found necessary, but so long as the necessity existed, he (Mr. Harington) could not see any objection to the inclusion in the law of the Section in question, the terms of it, as he had said, being permissive not imperative. He should therefore vote for the retention of the Section.

MR. FORBES said, he would not trouble the Council with a repetition of what he had already said on the proposed amendment in Section IX; the arguments there used were equally applicable to the question now before the Committee, but he did not intend to reiterate them. The Honorable Member for Bengal had said that, if a man committed a murder fifty miles north of his place of abode, and fled to a village fifty miles south, it would be very hard to punish the inhabitants of an Umshum at a distance of a hundred miles, for failure to deliver him up. But, as the Honorable Member on his left (Mr. Harington) had just remarked, the provision was not obligatory but permissive. Nor were they to suppose that the Magistrate would desire to enforce the provision, or that the Government would sanction his doing so in a case in which its enforcement would be obviously and manifestly unjust. Further, the Committee would notice that the wording of the Section was not such as would enable the Magistrate to assume that an offender had taken refuge in any village, and on mere suspicion to assess a fine upon the inhabitants for not delivering up a man who, after all, might not be there. The words in the Section were, "or wherever any such perpetrator may *be found*," and the actual fact of the presence of the offender in a village would be a necessary preliminary to the enforcement of this part of the law.

With regard to the information possessed by the Moplas generally of the acts of their countrymen, he would read an extract from the Report of the Commissioner who was sent to the Province to investigate their fanatical outbreaks:—

"These outbreaks, saving where a solitary individual may break out, as in the early cases, are brought about by concert, and are not executed until some time has passed, during which the plan is being matured. The mind has to fortify itself for execution of a tragedy which involves the agent as well as the victim in destruction. The fanatic doctrine needed for this has to be imbibed and to work. Comrades have to be gained; the priest consulted; and the consent of parents obtained. When the resolution to die has been taken, some further time is passed in devotional exercise, and the affairs of this life should be settled; debts should be paid off, or forgiveness for them obtained, and the wives should be put away, and their dowries in like manner adjusted. The very demeanor when a man has thus doomed himself to leave the world must undergo a change, and it is prominently marked in the instances of these fanatics, in their hardening themselves against any show of affection for their families. All these characteristics have been brought to light more or less in the course of the outbreaks, or threats of outbreaks, and some are also dwelt upon in the commemorative songs to which I have before alluded. The consent of parents is there described as obtained at times with difficulty, and as finally given under the consideration

that the merit of the martyrdom will extend also to them by virtue of such consent. It is impossible hence, but that the priest, the neighbors, and the families of the fanatics, must have that knowledge or inkling of their design which would serve to expose it. In every case, therefore, where it may appear that an outbreak has been pre-meditated, these parties should be punished, if they have not given timely intimation thereof, and can adduce nothing to purge themselves from the charge of suppressing information arising presumptively and naturally against them. The influential men of the caste in the vicinity may also be often justly held to the like liability. I would however give all such the opportunity of absolving themselves by any good service they may be able to execute by bringing in or putting down fanatics after they may have broken out. The influence of these parties, exerted on the fanatics under these circumstances of danger to themselves, might possibly in some cases be of effect, while the knowledge that all associated with them would be liable to ruin by their act would, no doubt, operate to check parties from engaging in these outbreaks."

When therefore it appeared that these terrible crimes were perpetrated with such publicity as to require the consent of parents to be obtained, and the blessing of a priesthood to be sought, when debts were to be paid or the absolution of creditors obtained, when wives were publicly dowered, and songs even were sung in celebration of the projected enterprise, it surely was not assuming too much to believe that the Mopla community generally in any village to which the fanatic belonged, or in which he might take refuge, were cognizant of his mind, and to insist on their delivering him up, or suffering the penalty of their complicity. He should feel it his duty to oppose the present amendment.

MR. SCONCE'S Motion being put, the Council divided—

Ayes 3.	*Noes* 4.
Mr. Sconce.	Sir Charles Jackson.
Sir. James Outram.	Mr. Forbes.
The Chairman.	Mr. LeGeyt.
	Mr. Harington.

So the Motion was negatived and the Section was passed as it stood.

Sections XI and XII were passed as they stood.

Section XIII was passed after an amendment, limiting the duration of the Act till the end of the year 1869.

The Preamble and Title were passed as they stood.

The Council having resumed its sitting, the Bill was reported.

CRIMINAL PROCEDURE.

The Order of the Day being read for the adjourned Committee of the whole Council on the Bill "for simplifying the Procedure of the Courts of Criminal Judicature not established by Royal Charter," the Council resolved itself into a Committee for the further consideration of the Bill.

Section 1 of the proposed Jury Rules prescribed the qualifications of a Juror.

MR. HARINGTON proposed to reduce the maximum age of a Juror from sixty to fifty years.

MR. LEGEYT moved that the maximum be reduced to fifty-five years.

MR. HARINGTON'S Motion was negatived, and Mr. LeGeyt's was carried.

MR. HARINGTON moved to reduce the minimum age from twenty-five to twenty years.

The Council divided—

Ayes 2.	*Noes* 5.
Mr. Harington.	Mr. Sconce.
Sir James Outram.	Sir Charles Jackson.
	Mr. Forbes.
	Mr. LeGeyt.
	The Chairman.

So the Motion was negatived, and the Section as previously amended then passed.

Section 2, which prescribed the disqualifications of a Juror, was passed after verbal amendments.

Section 3 was the Exemption Clause.

MR. HARINGTON proposed an amendment to the effect that all (and, not as the Section, already provided, certain specified) Officers of Government should be exempted from the liability to serve on Juries.

After some discussion, the Motion was by leave withdrawn.

MR. FORBES moved to substitute "All persons in the Military Service" for "Officers in the Military Service."

The Council divided—

Ayes 5.	*Noes* 2.
Mr. Sconce.	Mr. LeGeyt.
Sir Charles Jackson.	The Chairman.
Mr. Forbes.	
Mr. Harington.	
Sir James Outram.	

So the Motion was carried, and the Section as amended then passed.

Section 4, which related to the preparation of lists of Jurors, was passed after amendments.

Sections 5 and 6, relating to the publication and revision of Jury Lists, were passed as they stood.

Section 7 provided that "the Court of Session shall, *three days at the least before the time fixed for the holding of Sessions*," summon Jurors, &c.

MR. HARINGTON moved the omission of the words in italics. He said that, if the Section were passed as it now stood, and if the Council resolved that Sessions trials should be held only on particular days, he feared that great difficulties would arise, and that it would be impossible for the present number of Sessions Courts to dispose of the work coming before them within a reasonable period. Under the present system cases committed to the Sessions were disposed of as soon as they were ready for hearing, which was a great convenience to the parties and witnesses as well as to the Judges, but if trials were to be held only at stated periods, he apprehended that there would often be a great accumulation of cases, which would lead to much delay in their determination and the whole work of the Judge's Court would be thrown back in consequence. The present system worked well, and he was strongly in favor of its continuance.

MR. LEGEYT said, unless a rule were adopted such as that which the Honorable Member proposed to omit, there would be an end altogether to the Jury system. His experience was certainly in favor of a fixed term for holding Sessions. There was no necessity whatever for subjecting Jurors to the inconvenience of attending unnecessarily until a case was ready for trial; whereas he saw no hardship in making a prisoner wait for a day or two. On the contrary, he was not one of those who would take a prisoner by surprise, but he would let him have time to consult his Counsel and prepare for his defence. On the whole, therefore, he thought that fixed Sessions would be a very great improvement upon the present system.

MR. FORBES said, so far from joining the Honorable Member for Bombay in the opinion that fixed Sessions would be any improvement upon the present system, even the amendment proposed by the Honorable Member on his left (Mr. Harington) would hardly make the Section applicable to the Southern Presidency of India. Immediately that a case was closed, the Magistrate was required to transmit it to the Sessions Court, without any previous intimation to the Court that the case was ready for committal, or any instruction from the Court to commit it. It would therefore be impossible for the Court in the Madras Presidency to give three days' notice to the Jurors, as it would not be known that a case had been committed for trial until the parties arrived at the Court, and it would be extremely inconvenient, and in many ways objectionable, that the trial should be postponed. The great size of many of the Provinces in Madras must also be considered. It might be very easy for the Judge in a Bengal District of 2,000 or 3,000 square miles to hold communication with a Magistrate before a case was committed, but the question assumed another aspect when, as in Madras, some Districts contained 13,000 square miles and had from fifteen to twenty committing Officers scattered over them, at distances from the Court varying from ten to ninety miles. The Honorable Member for Bombay seemed to think it hard that Jurors should have to wait. But he (Mr. Forbes) apprehended that it would be very hard indeed to make witnesses wait, and he would suggest the substitution of the words "wherever necessary" for the words proposed to be omitted.

After some further discussion, Mr. Harington's Motion was negatived, and the further consideration of the Bill postponed on the Motion of Sir James Outram.

STANDING ORDERS.

MR. HARINGTON postponed the Motion (which stood in the Orders of the Day) for a Committee of the whole Council on the Report of the Select Committee on the Message from the Governor-General in Council calling for a Report on the practical working of the Standing Rules and Orders of the Legislative Council.

ACQUISITION OF LANDS FOR PUBLIC PURPOSES.

MR SCONCE moved that the Bill "to amend Act VI of 1857 (for the acquisition of land for public purposes)" be referred to a Select Committee consisting of Mr. LeGeyt, Mr. Forbes, Sir Charles Jackson, and the Mover.

Agreed to.

ARMS AND AMMUNITION.

MR HARINGTON moved that the Bill "to make perpetual Act XXVIII of 1857 (relating to the importation, manufacture, and sale of Arms and Ammunition, and for regulating the right to keep or use the same)" be referred to a Select Committee consisting of Mr LeGeyt, Sir Charles Jackson, Mr Sconce, and the Mover.

Agreed to.

POLICE (PRESIDENCY TOWNS AND STRAITS SETTLEMENT)

MR FORBES moved that a communication received by him from the Madras Government be laid upon the table, and referred to the Select Committee on the Bill "to amend Act XIII of 1856 (for regulating the Police of the Towns of Calcutta, Madras, and Bombay, and the several stations of the settlement of Prince of Wales' Island, Singapore, and Malacca)."

Agreed to.

CUSTOMS DUTIES (BOMBAY).

MR LEGEYT gave notice that he would, at the next Meeting of the Council, move for a suspension of the Standing Orders, in order to carry the Bill (as consolidated by the Select Committee) "to amend Act I of 1852 (for the consolidation and amendment of the Laws relating to the Customs under the Presidency of Bombay)" through its remaining stages.

CONSERVANCY (PRESIDENCY TOWNS AND STRAITS SETTLEMENT).

THE VICE-PRESIDENT moved that Sir Charles Jackson and Mr Sconce be added to the Select Committee on the Bill "to amend Act XIV of 1856"

Agreed to.

The Council adjourned at ½ past 4 o'Clock on the Motion of Sir James Outram, to Tuesday, the 30th Instant, at 11 o'Clock.

Tuesday, August 30, 1859.

PRESENT:

The Hon'ble the Chief Justice, *Vice-President*, in the Chair.

Hon Lieut Genl. Sir James Outram,	Hon Sir C. R M. Jackson,
Hon H B Harington,	and
P W LeGeyt, Esq,	A Sconce, Esq.
H Forbes, Esq,	

TRADES AND PROFESSIONS.

The adjourned Order of the Day for the second reading of the Bill "for the licensing of Trades and Professions in India" being read—

MR HARINGTON said, the adjournment of the Debate on this Bill, at the last meeting of the Council, arose out of two suggestions which fell from the Chair The first of those suggestions was that he should withdraw the Bill, and, if he deemed it right, bring in a new Bill, which should be free from what were considered to be the imperfections of the present Bill The second suggestion was that, if he objected to withdraw the Bill, it should be read a second time by consent, and then submitted before publication to a Select Committee, with instructions to consider whether certain alterations should not be made in it. What those instructions were to be was not said To the first suggestion he had no hesitation in at once declining to accede. Violent though the attacks made upon the Bill by the Honorable and learned Vice-President and the Honorable Members opposite (Sir Charles Jackson and the Honorable Member for Bengal) had been, not a single reason, to his mind, had fallen from them to render the adoption of the first course, either proper, necessary, or expedient As regarded the second suggestion, he had some difficulty in dealing with it, seeing that the purpose for which the Bill was to be referred to a Select Committee was altogether undefined The treatment which the Bill had met with at the

hands of the Honorable and learned Vice-President afforded no ground to believe that the instructions to the Select Committee, if they emanated from the same source, would be conceived in a kind or friendly spirit to the Bill, as now framed, and there was every reason for the anticipation that, whatever the Honorable and learned Vice-President proposed, would receive the support of the other two Honorable Members to whom he had alluded, so that had he, in ignorance of what was intended to be done, acceded to the second suggestion of the Honorable and learned Vice-President, he might have had his Bill returned to him "transmogrified," to use a word which he remembered to have seen in an old play, though he did not believe it was to be found in any modern Dictionary, from a Bill for licensing Trades and Professions into an income-tax, or a poll-tax, or a tax on everybody and everything. He did not choose to run the risk of this. He was quite willing to let the Motion for the second reading of the Bill go to the vote, and to abide by the decision of the Council on that Motion; but he was not willing then, any more than he was willing now, to incur the hazard which he had just mentioned. Of course, had the Motion before the Council been put to the vote, it was open to the Honorable Members opposite to throw out the Bill, even though by so doing they might, to some extent, if he might so express himself, stop the supplies, which was one of the functions of the House of Commons which Honorable Members opposite seemed disposed to assume. He would, however, suggest for the consideration of these Honorable Members whether, if they were really prepared to insist upon all that the Honorable and learned Judge opposite (Sir Charles Jackson) mentioned in the speech delivered by him on Saturday last, (assuming that speech to have been reported with tolerable accuracy), and to require what the House of Commons required under somewhat similar circumstances, and which, it was not necessary for him to say, amounted to a direct control over the public expenditure and other matters of detail, even as to the number of men to be employed in the Army and Navy, they should go a little farther and take upon themselves the responsibilities of the House of Commons, as well as its powers of control over the public purse. But he would remind Honorable Members that this was simply impossible under the existing constitution of this Council. Whatever Honorable Members might consider to be their duty to the public, when financial measures were proposed for their consideration, he could have no hesitation in telling them that it was the Governor-General of India in Council in his Executive capacity, and not the Governor-General of India in Council in his Legislative capacity, who was responsible for the good Government of India; who was answerable for the right administration of the public finances; and that this responsibility could neither be arrogated by this Legislature to itself, nor could this Council relieve the Governor-General of India in Council in his Executive capacity from it. If functions, such as it appeared to him they seemed to be on the verge of assuming, were really vested in this Council, he could not but apprehend the greatest amount of public danger from the exercise of them. At any moment the Government might be brought to a dead lock by a vote of this Council in respect to a financial matter, particularly when, as at present, three of what might be considered its own Members were absent, and it seemed to him that the consequences which would ensue, even so far as the Honorable Members themselves were concerned, would be poorly compensated by any amount of popularity or public applause, as the reward of that spirit of independence which was at last declared to have exhibited itself within the walls of this Chamber.

But this was a digression. When he broke away into these remarks, he was explaining the difficulty in which he had found himself placed by the second suggestion which fell from the Chair, and he thought that it was no unreasonable request which he had made, that some time should be allowed him for consideration before he intimated to the Council what course he intended to pursue. He had since had a conversation with the Honorable and learned Vice-President, and he now found that, with exception to some mere matters of

detail calculated to render the enforcement of the law more easy, and the law itself more effectual, to which the Government could not of course make any objection, and to the inclusion in the Bill of the Officers of Government, on which point some difference of opinion existed between himself and the Honorable and learned Vice-President, the instructions which the Honorable and learned Vice-President had intended to propose should be given to the Select Committee, embraced only two alterations in the Bill. One of these he (Mr. Harington) had himself asked the Council to allow to be introduced before the Bill was read a second time. He alluded to the addition of three higher classes in Section VIII of the Bill: and the other, which had reference to the rating of parties, or to the manner in which this should be done, he had stated his willingness to introduce when the Bill was in Committee, should such appear to be the general wish of the Council. So that, after all, he could have safely adopted the second suggestion of the Honorable and learned Vice-President, and by so doing, have saved the Council the necessity of an adjournment and the loss of time consequent thereon, which he much regretted.

He would now proceed to explain the course which he was willing to pursue, in order to meet, as far as he could do so with propriety, the wishes of the Council, or rather of the Honorable and learned Vice-President, and the Honorable Members opposite, who, while they stated their intention to vote for the second reading, spoke against the Bill, and intimated their intention of doing their best to prevent its passing into law, unless greatly modified in Committee.

He was willing that the Bill should be read a second time in its present form, on the understanding that it should at once be referred to a Committee of the whole Council, to whom he would propose certain alterations which the Committee might adopt, or reject, as they pleased. He was willing that the point regarding the inclusion of Government Officers in the Bill, on which point, as he had said, he differed from the Honorable and learned Vice-President, should be discussed, and should be decided by the vote of the Council, on the understanding that, whatever was the result, the Bill should still go on; but he was not willing that the Committee should have power to add to the Bill any subjects of taxation other than what he had just mentioned. The particular subjects which he had in his mind he would mention presently; and rather than they should be added, he would abandon the Bill or prefer that it should be thrown out on the motion for the second reading, whatever might be the consequences. But he would first explain the alterations which he was willing should be made in the Bill before it was published for general information. These perhaps he had better read, commenting upon them as he proceeded.

The first alteration related merely to a law of the Madras Presidency, which, by a mistake, had been omitted to be included in the repeal Section, and to the inclusion of which now in that Section no objection, he thought, could be made. The law to which he referred was Regulation IV. 1818, which prescribed rules for the assessment and collection of the Veesabuddy or tax upon the profits of trade in the provinces known by the appellation of the Ceded Districts, or the Zillahs of Bellary and Cuddapah.

The next alteration was in Section VIII, or rather in that part of the Section which contained the Schedule of sums payable on licenses. The first class it was proposed to assess at 5,000 Rupees, the maximum amount mentioned by him on Saturday last; the second at 4,500 Rupees; the third at 4,000 Rupees; the fourth at 3,500 Rupees; the fifth at 3,000 Rupees; the sixth at 2,500 Rupees; the seventh at 2,000 Rupees; the eighth at 1,500 Rupees; and so on, according to the Bill as originally introduced; the number of classes being increased from ten to seventeen. Upon the alterations proposed in this Section, he wished to remark that, although it had been said that, by proposing the addition of higher classes, compared with the Bill as published, he had altered the character of the Bill, he believed he should be guilty of no breach of confidence in stating that the Honorable and learned Vice-President had suggested this alteration. He (Mr. Harington) might have been

wrong in adopting the suggestion. He might have acted unwisely in taking the Honorable and learned Vice-President's advice, though those who knew the Honorable and learned Member as well as he did, and who had been as closely associated with him as he had been in official matters, would, he thought, agree with him that, in acting upon the Honorable and learned Member's suggestion, he was not likely to have erred very greatly.

The Honorable and learned Vice-President objected strongly in his speech on Saturday last to the distinction made in the Schedule of the Bill between Bankers and Traders, and he believed the Honorable and learned Vice-President said that, if Messrs. Wilson and Co.'s profits equalled those of the Bengal or Agra Bank, or of any other banking institution, he could not see why they should not be assessed equally with them. Neither could he (Mr. Harington) see why any difference should be made, and the distinction was accordingly proposed to be done away with. Whether Messrs. Wilson and Co. would concur with the Honorable and learned Vice-President, or whether the Calcutta tradesmen generally would approve of the alteration which had been made on the Honorable and learned Vice-President's suggestion, might admit of question. The Government would undoubtedly benefit greatly by it, and as for the rest, they might perhaps say, "save me from my friends."

The next alteration was in Section IX. He proposed after the word "person" in line 11, to insert the following words :—

"And the amount of the annual net profits or gains accruing therefrom; and in such manner that the sum to be paid for the license shall approximate as nearly as may be to three per cent. on such annual profits or gains."

In alluding to this Section on Saturday last, he observed that the provision which it contained might be considered too vague, and that it might be objected to the Section that, if so large a discretion were left to the Taxing or Licensing Officer, it might lead to considerable diversity of practice, and to a greater degree of inequality, if not in the same district, still in different districts, than he had contemplated, and, although he had endeavored to prevent this by giving the Governor-General in Council power, in a later Section of the Bill, to lay down rules for the guidance of the local Officers in all matters connected with the enforcement of the law, he stated that, if the Council at large thought that, whatever rate or rule of assessment was to be followed, should be made to appear on the face of the Bill, he was quite willing, when the Bill got into Committee, that a Clause should be added for this purpose. In proposing the present amendment, therefore, it was possible that he was only anticipating matters. For his own part he must say that he preferred the Section as it stood. In so far as Native traders were concerned, he thought it would be better to leave the Collectors to make the assessment with the assistance of Chowdries of trades, or of a Punchayet, and he believed that the Section, as framed, would work well. Although it had been stated that there was no principle in the Section, it was only the other day that they passed a Bill, in which a precisely similar power to that proposed to be conferred by the Section on the Taxing Officer was given to Magistrates, without any objection being taken to it. He alluded to what was called the Moplah Bill. Under that Bill the Magistrate was left to assess a fine which he might impose upon a body of men, according to what appeared to him to be the circumstances of the several parties composing the body. This showed that he was proposing nothing new.

After Section IX he would move the introduction of the following new Section, which was rendered necessary by the addition proposed to be made to that Section :—

"Any person who shall satisfy the Collector or other Officer authorized as aforesaid that the aggregate annual amount of the net profits or gains of the trade, business, or profession carried on by such person (estimated according to the provisions of the last preceding Section), is less than a sum which, so estimated, would render him liable to assessment under Class 17 of Section VIII, he shall be exempted from taking out a license under this Act."

Section X he proposed to omit, as it was not thought right to make any distinction between Bankers and Traders.

He proposed to introduce the following new Sections after Section XI. For these Sections he was indebted to the Honorable and learned Vice-President. Their object, it was scarcely necessary for him to say, was to enable the Taxing or Licensing Officer to arrive at a proper determination of the class under which every person required to take out a license should be assessed.

"The Collector or other Officer authorized as aforesaid, may summon any person whom he shall think able to give evidence for the purpose of enabling him to determine under which of the classes mentioned in Section VIII of this Act any person should be assessed, and may examine such person as to any such matter. The Collector or other Officer, as aforesaid, may also require the person summoned to produce any books or documents in his possession or power relating to the trade, or business, or profession of any person supposed to be liable to assessment, or to the amount of the annual profits or gains accruing therefrom. If the person summoned shall refuse to answer any lawful question of the Collector or other Officer as aforesaid, or shall knowingly give any incorrect answer, or shall refuse to produce any such books or documents as aforesaid he shall be liable to a penalty not exceeding five hundred Rupees, or if he be a person liable to be assessed, the Collector or other Officer as aforesaid may assess him under any of the classes mentioned in Section VIII of this Act, and no appeal shall lie from such assessment, on the ground that such person had been assessed under too high a class with reference to the provisions of Section IX of this Act.

"In order to enable the Collector or other Officer authorized as aforesaid to determine under what classes persons requiring to be licensed shall be assessed, and what sums shall be paid in respect of licenses granted under this Act, he may cause to be sent to any person supposed to be liable to the payment of the tax hereby imposed a Schedule to be filled up with such information respecting the trade, business, or profession carried on by such person, and the amount of the annual net profits or gains accruing therefrom, the number and names of persons holding any office or employment under him, and their salaries, fees, and wages, as the Collector or other Officer authorized as aforesaid may judge necessary for the purpose of such assessment. The Schedule shall be filled up in writing, and dated, and shall contain a declaration signed by such person that, to the best of his belief, the Schedule is a true return of the matters therein contained. Such return shall be delivered to the office of the Collector or other Officer as aforesaid, by every person to whom it is sent, whether or not liable to the payment of such tax; and whoever refuses, neglects, or omits duly to fill up and return such Schedule within twenty-one days from the receipt thereof, or knowingly gives therein any incorrect or false return, shall be liable to a penalty not exceeding five hundred Rupees."

He proposed after Section XVIII to introduce the following new Section, which had also been suggested by the Honorable and learned Vice-President, namely:—

"No person required by this Act to take out a license shall be allowed to recover in any judicial suit or proceeding any money, debt or charge claimed by him in respect of the trade, business, or profession carried on by him, unless such person shall prove to the satisfaction of the Judge or Officer presiding at the trial, that at the time when the cause of action accrued he had duly obtained a license in conformity with this Act."

The last alteration which he proposed to make was in Section XX. To this Section he wished to add the following words. They would, of course, apply only to persons holding situations in private establishments:—

"And shall be assessed (with reference to the provisions of Section IX of this Act) upon an estimate of the annual salary, fees, wages, perquisites, and profits of such offices or employments. Provided that, if any person holding any such office or employment shall satisfy the Collector or other Officer authorized as aforesaid, that the salary, fees, wages, perquisites, and profits of his office or employment do not exceed one hundred Rupees per mensem, such person shall not be required to take out a license under this Act."

These were the alterations which he proposed to move after the Bill was read a second time, and before it was published and referred to a Select Committee. As he had already said, it rested with the Council to adopt them or not, as it deemed proper.

He now came to the classes or subjects of taxation which he thought should not be included in the Bill, and he would prefer to abandon the Bill altogether rather than give his consent to their being so included. These were Houses, Land, and the Government Securities.

With reference to the comments which had been made by the Honorable and learned Judge opposite (Sir Charles Jackson) on the Statement of objects and reasons circulated with the Bill,

he must remark that he thought the Honorable and learned Judge would have behaved more generously, if, instead of commenting upon a Statement which was put in merely to comply with the forms of the Council, he had taken the speech which he (Mr. Harington) delivered in moving the first reading of the Bill, and which, although possessing no merit as a composition, contained, he submitted, as full information as could be desired, and had made his remarks upon that. The Honorable and learned Judge had been long enough in the Council to know that the Statements of objects and reasons circulated with Bills were generally very short. On the very day on which the Honorable and learned Judge commented in so sneering a manner upon the Statements of objects and reasons circulated with the present Bill, he (Mr. Harington) had occasion to refer to the Statement of objects and reasons of a Bill introduced by the Honorable and learned Vice-President, in which all that was said was—"The objects of this Bill are stated in the Preamble." The Honorable and learned Vice-President, in moving the first reading of the Bill, entered into a full exposition of his reasons for introducing it, and in the debate which ensued, Honorable Members referred to what was said by the Honorable and learned Vice-President on that occasion, not to the Statement of objects and reasons. What was there, he would ask, to have prevented him from copying into the Statement of objects and reasons circulated with the present Bill the whole of what he had said when he introduced the Bill to the Council; but as he knew that Honorable Members had been furnished with a copy of the remarks made by him on that occasion, he did not wish to impose upon them the trouble of reading a long Statement of objects and reasons, and he therefore purposely made that Statement as brief as possible.

In addition to the subjects of taxation embraced in the present Bill, he stated in his introductory remarks that the Government had had under consideration other modes of increasing the public revenue. He mentioned that in Bengal the Governor-General in Council had already the power, without any new law, to raise the duty on Salt from Rupees 2-8 per maund, the amount now paid, to Rupees 3-4 per maund, and that a reference had been made to the Government of Bengal on the subject. He referred to the Bills brought in by the Honorable Members for Madras and Bombay, the effect of which would, he hoped, be to increase the Revenue derived from Salt in those Presidencies, or at least in Bombay. He stated that in the Punjab steps had been taken with a view to increase the Salt Revenue of that territory. He stated that in the North-Western Provinces a duty of 2 Rupees per maund was levied on all Salt crossing the Frontier, and a further duty of 8 annas per maund on any Salt passing Allahabad; and that it had been proposed to levy a uniform duty of Rupees 2-8 per maund on all Salt crossing the Frontier, the extra duty now taken at Allahabad being abolished. He also stated that some Officers had proposed to increase the duty to 3 Rupees per maund all round, and he mentioned that the question of increasing the duty on Salt in the North-Western Provinces would have to be considered in connection with the newly acquired Province of Oude, which produced a good deal of Salt, and that reports had been called for from the Lieutenant-Governor and the Chief Commissioner in Oude, on the receipt of which it would be decided whether any alteration should be made in the rates of duty now charged on Salt crossing the North-Western Frontier. Then he alluded to the Bill relating to Stamps, which was introduced by the Honorable Member for Bengal, and in respect of which he stated that it was impossible to say what would be the effect of that measure on the public Revenue, but that it was expected that the sale of Stamps other than judicial would produce a large additional Revenue, though in judicial Stamps there would probably be a falling off of Revenue, if certain measures then under the consideration of the Council were adopted. He proceeded to notice certain taxes which it had been proposed to introduce, namely, a tax on tobacco grown in the country, a tax on houses, an income tax, and a succession duty. With regard to all these he had mentioned that the Government hesitated, from political considerations, to introduce them. He had referred parti-

cularly to the Land Revenue in Bengal, and stated that a doubt had been raised whether the holders of permanently settled estates could legally be subjected to further taxation. That was a question on which he had offered no opinion. As regarded the taxes above mentioned, he stated that the Government deemed it advisable that there should be further enquiry and a more full consideration before a decision was come to either one way or the other. Although the whole of these taxes might at some future time be imposed, so far as he was aware the Government had no intention of having recourse to any of them at present. He did not think that the Government ought to give any pledge in the matter; he considered that it would be most impolitic for the Government to bind itself in any way, particularly in the present state of Europe and of this country. Who could say what a day might bring forth, or what might happen on the morrow?

Government was making every effort to reduce the public expenditure. A deficit of thirteen crores of Rupees had been reduced to seven crores, and a further reduction of forty lakhs had been effected during the current financial year. There was no objection to placing before the Council every information which might be really useful to it consistently with the object and purpose for which the Council was constituted. But the Government itself was not in a position at present to form an estimate as to what would be the future expenditure in various Departments. Take for instance the Native Army of Bengal. The question of the re-organization of that Army, as the Council was aware, was before the Home Authorities, and until it was decided by them how many European and how many Native Regiments were to be kept up, it was impossible for the Government to know what would be the future expenditure of India under this head. Not very long ago they were told that twelve Battalions of Royal Artillery were to be despatched to India, the pay and other expenses of which would have had to be provided for in this country; then they were told that only six Battalions were to be sent, and now they were informed that none were to come. At present, therefore, much uncertainty prevailed.

He had mentioned in his introductory remarks, that a Commission was sitting at Bombay for the purpose of ascertaining what reductions were practicable in the Military Department, and that the Commission, after completing its enquiries at Bombay would proceed first to Madras and afterwards to Calcutta. It was impossible to say what reductions might be proposed by that Commission, or to what extent the Government might be prepared to adopt its recommendations. In fact it was almost impossible at this moment to form any idea what the expenditure of India would be this day twelvemonth. He thought that all who heard him would agree, that to whatever extent it might be found practicable to reduce the present expenditure, it was quite impossible to hope for the reduction of the large existing deficit from the existing revenues of the country, and there seemed therefore no alternative but to have recourse to further taxation.

He hoped he had made himself clear as to the alterations which he was willing should be made in the Bill before it was published for general information, and as to the subjects of taxation, to the inclusion of which in the Bill he could not consent. It would be open to any Honorable Member who thought proper, to move that Government Servants should be included, though if such Motion was made, it was his (Mr. Harington's) intention, for reasons which he had already given, to vote against it.

SIR CHARLES JACKSON said, he had no doubt that the amendments proposed by the Honorable Member who had just sat down were great improvements upon the Bill as originally introduced, and would greatly assist in rendering it a working measure. Indeed, the introduction of some such Clauses appeared to him to be absolutely necessary, in order to allow the Bill to work at all. But, whatever the Bill might be called, whether entitled a Licensing Bill, or anything else, it was, in fact, nothing more or less than an income tax of three per cent. on certain trades and professions. The great objections to the Bill in its present state were grounded on the omission of those classes of income from the operation of the Bill, to which the Honorable Member had himself

adverted. These were the incomes derived from land, interest derived from Government Securities, statutable salaries, and all incomes derived from the rents of houses. It also omitted, but that was a question left open for the consideration of the Council, all Civil Servants and all Military Officers. Now he wished to guard himself against its being said hereafter, if he allowed the Bill to go to a Select Committee, that he approved of the exemption of any of these classes. His objection was not to an income tax, but to an Act which affected certain classes of income, and not others. With respect to land, it seemed that the Zemindars who held lands under the Permanent Settlement thought they were entitled, under the terms of that settlement, to hold their zemindaries free from all taxation for ever. It was true that this land was vested in them and their heirs for ever at a certain fixed rental which could never be altered, but it could never have been the intention to free them from sharing in the burden of a general personal tax applicable to all classes, although no specific tax on the land or on the landowners as a particular class, could legally or morally ever be imposed. He would refer to the land tax in England. This was a long time ago redeemed by an Act of Parliment, and a pledge was then given to the owners that they would be liable to no further tax on their land. But did that afterwards exempt them from a general tax? Since that time the income tax had been imposed, and they had never heard of any breach of faith. On the same principle, he saw no reason why landholders in this country could not be taxed, notwithstanding the decennial settlement.

Then, as to lakhiraj or rent-free tenures, he did not see on what principle they had been omitted. It was quite true that they held their lands to them and their heirs for ever free from payment of income to Government; but that did not mean they should be exempt from all taxation, but only that no tax should be henceforth imposed upon the land itself specifically.

Then, as to Government Securities, he certainly expected to have seen some Clause inserted in the Bill taxing all Government Securities. The taxation of this class was most easily levied, and the class included many natives who were mere drones, and who were enjoying large and princely incomes, without contributing one farthing toward the exigencies of the country. Why, and on what principle were these and all other holders of Government Securities to be excluded from the operation of the Bill?

Then there were the men who derived large profits from the rents of houses, and he did not see why they should escape. It was quite preposterous to contend that such a measure would operate as a house tax, and he was at a loss to imagine on what ground this class was excluded, who amassed large fortunes, and contributed little or nothing towards the pressure which was now being felt.

With regard to statutable salaries, it was said that the Government had been advised by their Law Officers, that the salaries of Judges, Bishops, Members of Council, Lieutenant-Governors, Governors, and Governors-General, could not be taxed, because their salaries were fixed by Act of Parliament. But he apprehended that, if such an opinion was given to Government, it must have been with reference to a Bill for licensing trades and professions. There could be no doubt that a Bishop or a Judge could not be expected to obtain a license for the exercise of his calling. Suppose the learned Chief Justice should omit to take out a license, would the Collector be justified in stopping his ingress into the Court, and telling him that he could not carry on his occupation as Chief Justice, although possessed of Her Majesty's Patent, and appointed under an Act of Parliament? He (Sir Charles Jackson) imagined that the Chief Justice would indulge in the pleasurable excitement of committing the Collector for contempt of Court. But if this licensing apparatus were abandoned, and the Bill made a regular income tax, they would be able to remedy this, and get at the salary of the Chief Justice and all other statutable salaries.

The other two classes which the Honorable Member (Mr. Harington) was quite willing to leave to the decision of the Council, were the Civil and Military Services. With respect to the former, he thought it absolutely necessary that they should be included in this Bill, and he certainly did not see any

good ground existing for the exclusion of all Military Officers, of whatever grade, although he thought the Regimental Officers of the grade of Captain, and under that rank, might be excluded from the operation of the Bill.

With regard to the exemption of the first four classes, then, namely, the landholders, holders of Government Securities, proprietors of houses, and statutable salaries, he understood that the Honorable Mover had put it distinctly on the grounds of political considerations—that for certain political reasons, the Executive Government did not think it expedient to tax them. He was not prepared to say that this Council was so constituted that the consideration of such questions of political expediency did come within their province. He for one was not prepared to take upon himself the responsibility of insisting upon that which the Executive Government considered inexpedient for political reasons. He must be content, therefore, to leave the responsibility of this most exceptional measure with the Government. But he objected to the length to which the Honorable Member had carried this part of the case, by saying that he and other Honorable Members, in discussing such matters, were assuming and arrogating to themselves the functions which belonged only to the House of Commons, and that they considered they had a right to stop the supplies required by Government. He would ask the Council, whether a single word which fell from him, when he last addressed them on this Bill, justified that observation of the Honorable Mover. All he did say, and would say again, was that, when any Bill was brought before that Council, they had a right to be furnished with sufficient information to guide them in their legislation, and enable them to discharge their duties honestly and efficiently; and he really thought that the Government had no reason to thank the Honorable Member for raising such a discussion in that Chamber. Either they were the Legislative Council, or they were not. If they were expected to pass enactments in the way that the Honorable Member would wish them, the Clerk of the Council might just as well draw up and correct the Bills himself. But if they were a Legislative Council, they ought to weigh every measure carefully before they gave it their sanction, and they had a right to demand every information they considered necessary to form a correct opinion on the subject, otherwise they would merely be a Council for the purpose of blindly registering whatever the Executive Government might think fit to propose. It would indeed render the existence of that Council a mere farce, and he thought that the doctrine of the Honorable Member was most unconstitutional, if he might apply that term to the present system.

Then, with regard to the Honorable Member's remark about parties seeking popularity and public applause. He should very much wish to know to whom that remark was intended to apply. He for one repelled such an observation with perfect scorn. He did not know what possible ground the Honorable Member could have had for such an insinuation, unless indeed he was so blind to the faults of his own measure as to be unable to appreciate the motives of those who took a different view of it. He for one was satisfied that he was only doing his duty in the position he was placed, and he thought that those who had agreed with him in the course he had pursued, had only exercised that right which they were bound to defend in their responsible situation as Legislators.

MR. HARINGTON explained that he did not intend to charge the Honorable and learned Judge opposite (Sir Charles Jackson), or any other Honorable Member, with having courted popularity in the opposition offered to the present Bill. What he wished to point out was that, if the Council took upon itself to call for information in the same manner as the House of Commons, it must be with some ulterior object; it could not be merely to gratify curiosity, but with a view to take some action upon the information required to be furnished. But he would ask what could be the character of that action? For instance, this Council could not take upon itself to say how many Regiments of Infantry, or how many Regiments of Cavalry, or how many Troops or Battalions of Artillery, were to be kept up for the defence of the

country. The House of Commons undoubtedly had a right to call for every kind of information, because the responsibility of every measure which it sanctioned lay entirely with Parliament, which was responsible to the Country for what it did; whereas here the Executive Government was responsible. The Council were there merely to pass laws to meet the exigencies and requirements of the country. It was very far from his intention in what he had said to give offence to any Honorable Member, and if he had done so, he begged to apologize for the same.

Mr. SCONCE said that he also, like the Honorable and learned Judge on his right, had reason to feel offended at the tone of the remarks of the Honorable Member opposite, but happily was conscious of having exhibited none of the hostility towards the Bill which the Honorable Member imputed to him. He (Mr. Sconce) was not disposed to question the theory of the constitution of this Council, which the Honorable Member had laid down. He had admitted himself on Saturday last, that the functions of the Council were limited and undefined. Nevertheless, it seemed to him that, when a Bill of this nature was submitted to them, they could not adequately express their assent or dissent to the measure, without being furnished with the amplest information. He could not walk in the dark or speak in the dark. It was not enough, it appeared to him, to declare generally the amount of the deficit for this year; but the Council were entitled to expect from the Government some explanation of the nature and origin of that deficit, by showing how the deficits in the preceding years had arisen. It was the income and disbursement of one year that helped them to know what the income and deficiency of another year were likely to be. In referring to the Debates, he found that, in the year 1856-57, disbursements and income nearly balanced each other. They also knew that last year there was a deficit of thirteen crores, and this year a deficit of seven crores. It seemed to him a matter of much importance to this Council to know to what particular circumstances these varying deficits, if on no other ground than from the interest involved in the information, were owing. It was of great importance to know the reason of this great difference between the deficits of immediately succeeding years. Suddenly the excess charge fell from thirteen to seven crores, making a difference of six crores. No doubt it could be well accounted for. But what it was desirable to have information upon was such an exposition of the financial history of past years as would instruct the Council regarding the financial position of the present year, from which they were called upon to legislate—though they might not expect to fall back upon the condition of 1856-1857, when the public income and charges were nearly balanced. He (Mr. Sconce) was now willing to leave this subject. He felt conscious of having shown no hostile spirit against the Bill. He knew no higher duty, as a Member of this Council, than so to shape his course as that the Queen's Government should be most effectually carried on, and he conceived he had taken no steps calculated to encumber Her Majesty's Viceroy, or to detract from the respect and deference which he always desired to pay him in the administration of the Government.

With respect to the Bill itself, he was ready, as he had said before, to vote for the second reading, and willing to consider the Bill in Committee. He was not unwilling to accept the principle of the Bill. Nevertheless, he thought that it was somewhat misnamed, and that when it came to the form into which the Honorable Member had expressed his readiness to convert it, it would be substantially a tax on the profits of trades and professions. One inducement held out to them to accept the Bill on this ground was that persons engaged in mercantile transactions would have the opportunity of throwing the charge upon outside customers. In some respects this might be the case, but only in an indefinite degree; substantially it would affect profits. By the very terms of the Act, all trades would be taxed; now, when the profits of all trades were taxed alike, it was vain to expect that one trader could reimburse himself for the amount of the tax, by charging that amount to his customer. He might indeed raise the price of his goods upon his neighbors;

but so also his neighbors would raise the price of their goods upon him, and the result would be that his own additional price would be swamped by what he paid. An exception might exist as regards those consumers who were not traders, or who, at all events, were not subjected to taxation under the Bill. But, undoubtedly, he believed, as a general rule, a tax upon the profits of trade fell directly upon the trader.

He then came to the question as to the competency of this Legislature to tax Zemindars holding permanently-settled estates. Perhaps he might ask, what were the facts of the case, and whether the revenue paid by Zemindars was in its nature a tax? It was incontestibly the constitutional maxim of the Revenue system of this country, that the State was entitled to a share of the produce of every beegah. Taking the land as it stood in 1790, three parties were interested in it, the Ryot, the Zemindar, and the Government. The rights of the Ryot and the State were indefeasible rights. The rights of the Zemindar might be the same. He (Mr. Sconce) would not say that they were less. It was enough for his purpose to say that they were not more. The revenue taken from Zemindars was no tax. The revenue was taken by the State by virtue of its own right. The Zemindar could not withhold the revenue imposed, for the Government took its own share of the produce of the land, not the Zemindar's share. There was nothing in the shape of a condition, compromise, or purchase between the Government and the Zemindar, at the time that the Permanent Settlement was concluded. It was essential, therefore, to keep in mind that the revenue charged on permanently-settled estates was not by any means a tax on the private profit or rent of the Zemindar, in any right sense of the term, and certainly the manner in which the Permanent Settlement was concluded afforded no argument for exempting them from being included in a general law of taxation. Whether the Zemindars of Bengal should be brought within the provisions of the present Bill or not, was another question; but what he was assured of, was that exemption could not be claimed upon the ground that they were taxed by the settlement of 1790. The object, as he understood, of the Governor-General at that time was not to relieve them from all eventual aid in the way of taxation, but simply to promote the good of the people, and of the Zemindars themselves, by giving encouragement to the cultivation of the land and developing the resources of the country. The Honorable Member (Mr. Harington) had reserved the expression of any opinion as to the legal liability of the Zemindars holding under the Permanent Settlement to be subjected to the present Bill; so no proposition to that effect being before them, he (Mr. Sconce) reserved his own; but in the remarks which he (Mr. Sconce) had just made, he had adverted to the historic character and constitution of the Permanent Settlement, and to the fact that the revenue by that settlement assessed was not a tax upon the resources of the Zemindars.

Probably this was not the time to discuss at any length the details of the measure. He feared he had very imperfectly expressed himself last Saturday concerning a doubt which had occurred to him, and upon which he thought it necessary to have some explanation. They knew that a tax of 2 Rupees might be imposed upon any shopkeeper, but the Bill gave no clue as to the class of shop-keepers who would have to pay it. No one in this room would object to pay it, but there were many shop-keepers to whom a yearly tax of 2 Rupees would be a material object. Upon the present scale of the Bill, supposing a tax of three per cent. on net profits, any shop-keeper whose yearly profits amounted to 66 Rupees would have to pay a tax of 2 Rupees. But supposing the tax to be an income tax, 66 Rupees was equivalent to £6 12*s*. They knew, however, that at home they carefully abstained from taxing any man under £100 or 1,000 Rupees. He did not say that a shop-keeper, whose net gains amounted to 66 Rupees a year, could not afford to pay 2 Rupees under this Bill; but it was a matter for careful deliberation whether the tax should be brought down to such low profits as 66 Rupees, or, whether, following the English scale, all should not be exempted whose profits were not over £100 or 1,000 Rupees. In connection with the

same lower grades of taxation, he would now only further advert to the exemption taken to personal incomes. Incomes which did not exceed 100 Rupees per mensem, or 1,200 Rupees per annum, were not to be assessed, that is the clerk who receives 100 Rupees per month, or 1,200 Rupees a year, would pay nothing, while the shop-keeper whose annual profits amounted only to 66 Rupees was to be taxed. This distinction might or might not be justifiable, but no doubt, at the proper time, it would receive the attention of the Council.

In admitting the limited and imperfect character of the Bill, he would state in a few words the grounds which induced him to assent to its second reading, and to give it his co-operation. He believed the characteristics, and he might say the advantages, of the Bill to be these: it was experimental; it was of limited local application; it was said to be moderate, though upon that matter there was more or less doubt; and, above all, he believed it must be temporary. He was entirely of opinion that the duration of the Bill should be limited, and that the Legislature should be again called upon to discuss both the principle of the law and the amount of revenue which it was designed to supply.

MR. FORBES said that he should have no hesitation in voting for the Motion for the second reading of this Bill. It might be that the Bill was not altogether perfect, but he was very sure of this, that, if they were to wait until some tax was proposed, to which no possible objection could be urged, they should have to wait a very long time indeed.

But, besides this, he was quite prepared to admit that, in matters of taxation, fiscal considerations were not all that was to be taken into account, and that questions of general policy would force themselves on the consideration of the Government, and oblige them, in prudence, to adopt the measure which might, on the whole, be most expedient in preference to that which, considered only in the abstract, might be a better and more productive tax.

In preferring one tax to another, the statesman would be partly guided by political considerations, and not solely by strict views of financial expediency, and nothing would be more likely to determine his choice than the prospect of carrying with him the cheerful acquiescence of the people.

Now he thought that no one could have lived for many years in habits of constant intercourse with the people of India, without having observed how very much custom and habit influenced all their thoughts and feelings and actions, and he could not doubt that it had been a wise policy which, in imposing additional taxation, had decided to impose it in a form which was familiar to many by actual experience, and which was known to all by tradition.

He wished to be allowed to say a few words on what had fallen from the Honorable Member who had introduced this Bill, on the occasion of its introduction, and again in this day's debate regarding the Salt tax at Madras. The Honorable gentleman had stated on both occasions, that additional revenue was anticipated to follow the passing of a Bill which he (Mr. Forbes) had lately introduced, but this would not be the case. The Bill referred to by the Honorable Member was intended simply and solely to substitute an Excise Duty for the present Salt monopoly, and it was not intended, in any way whatever, that the Bill should raise the Excise Duty above what were the present monopoly profits.

By Act VI of 1844 the monopoly price of Salt in Madras was fixed at not more than one and a half Rupee a maund, power being reserved to the Governor-General in Council to reduce the price at pleasure. Actually, the price had for some years been one Rupee a maund, and although it was true that the Government of India had lately directed that the price should be raised to one Rupee two annas, that was an act of the Executive Government under an existing law, and the Bill which he (Mr. Forbes) had introduced, and to which the Honorable Member had referred, merely substituted one mode of collecting the revenue for another.

The Council had heard it said in the course of this debate, that the present measure was not what it professed to be; that it professed to be a tax on trades and professions, while it was, in fact, an income tax limited to certain class-

es. He must however say that the matter did not present itself to his mind in this point of view. He thought that the Bill really was what, in its title, it professed to be, and could not in any proper sense be said to be an income tax. He would illustrate his view of the matter by his own case. His profession was the Civil Service of India, and for his service in that profession he received a salary, which salary would be subjected to tax; but he might also hold Government Securities, the interest on which would tend to increase his income; but this addition to his income would not be taxed by this Bill, and he therefore thought that the measure was truly called a tax on profession, and could not be called a tax on income. In the same way he might assume the case of a wealthy native, whose total income was a lakh of Rupees a year, half of which he made in trade, and half of which he received as the profits of a landed state; the fifty thousand Rupees received from trade would be liable to tax, while the fifty thousand received from the estate would be exempt, and he thought that, as in the former case, the tax was on the profession only, so in this case it was only on the trade, and in neither was general income made liable to the provisions of the Bill.

As regarded what fell from the Honorable and learned Chief Justice at the commencement of this debate on the question of including Military Officers among those to whom the provision would apply, he thought that, however good as an abstract question the argument might be that the Colonel and the Major received as much pay as many Civil Officers who would be liable to the tax, there were circumstances which, when the question was looked at somewhat more in detail, afforded good ground for supporting the view which the Government had taken. He approached the subject with the diffidence which he always felt when he was so unfortunate as to hold an opinion at variance with that held by the Honorable and learned Chief Justice; but still he would state to the Council the light in which the question presented itself to him.

In the first place, he thought it must be remembered that, while all Civil Officers of every grade, whether Covenanted or Uncovenanted, received their appointments without having to pay a single Rupee for them, very few Officers in the Army ever obtained a step in rank without having to pay heavily for the advantage. It was very true that the Colonel and the Major received an amount of pay which would be taxed, if drawn by a Civil Officer; but the fact that, in the one case the salary was to some extent purchased, while in the other it was obtained for nothing, made in his estimation a great difference in the propriety of subjecting them each to tax. Not only moreover was an Officer's rank in the Army purchased with his own money, but that money was but too often obtained at very high interest. All had heard, during Sir Charles Napier's command, of the indebted state of the Army, and it was, he believed, well known that that indebted state arose mainly from the habit of purchasing steps. Officers were often unable to pay down their money in cash, and had recourse to Banks and other lending institutions, at which, what with interest and the expenses of a Life Insurance, they seldom were accommodated at a less cost to themselves than eighteen per cent.

Then, again, he thought that reference should be had to the fact that, whereas the Colonel or the Major did not obtain the income of their respective ranks under twenty or five-and-twenty years, a similar income was attained by the Civil Officers of Government in eight or ten years, while each had to maintain the same social position, and each to meet the same expenses incidental to educating and bringing up and providing for a family. Then, again, he thought that consideration should be given to the future prospects of each class. There were but few Generals of Divisions, and to the great majority of Officers the command of a regiment was the highest and most lucrative post obtainable; but to the Civil Officers there were many Collectorships, many Judgeships, Commissionerships, Boards, and Councils; and as the prospects of each class were different, so, in his opinion, might their liabilities to taxation be different also.

Before he sat down, he would say one word upon the question that had

been raised as to the insufficiency of detailed information on the state of the finances, which had been furnished to the Council by the Government on the introduction of the Bill. Now the Council had been told distinctly the amount of the present deficit, and whether that deficit arose from a too lavish expenditure on the Army, or from too little parsimony in the Civil expenditure, whether the Commissariat had been too expensive, or the Public Works Department too liberally supplied, did not appear to him to be of much consequence to the Council. This Council could not control or alter the expenditure in any one of the branches he had referred to, and it appeared to him that they might well accept the statement of the deficit made by the Government as a fact, and legislate upon it, without insisting upon knowing how that deficit had arisen, since that was a matter which could have no practical bearing on their deliberations, even if the information were supplied.

He looked on this matter as he looked upon the Act for which the Governor-General, from time to time, came down to this Council to enable him to proceed to the Provinces, and to act without his Council. He (Mr. Forbes) did not, on such occasions, demand to know what were the political reasons which induced the Governor-General to quit Calcutta, he accepted as a fact the assurance that reasons did exist, and he was prepared to legislate accordingly.

SIR JAMES OUTRAM said, the Honorable Member for Madras had stated reasons why Military Servants should be exempted from taxation, while their Civil Comrades were not so. He had given reasons worthy of consideration, chiefly founded on the expense to which Military Officers were put in purchasing commissions and advancement in the service. He (Sir James Outram) would claim exemption for them on still more reasonable grounds. He would compare their position with that of Civil Servants, and show the different footing on which they stood as regards allowances, and as to their capability to bear equal taxation. Now the 11th class of 250 Rupees corresponded with an annual income of 8,300 Rupees, or a monthly income of 700 Rupees, which was little below a Lieutenant-Colonel's pay and allowances, namely 827 Rupees per mensem, and nearly as much in excess of a Major's pay and allowances (640 Rupees per mensem). He was taking half batta or garrison allowance, the difference of full batta being supposed to be absorbed by expenses on account of establishments while out in the field.

Then the 12th class of 100 Rupees would correspond with an annual income of 3 300 Rupees, or a monthly income of 275 Rupees, which was somewhat below a Captain's pay and allowances (374 Rupees), somewhat above a Lieutenant's salary (225 Rupees), and greatly above that of an Ensign (182 Rupees).

The 700 Rupees salaries in the Civil Service were enjoyed by comparatively young gentlemen of not above the average standing in the service of Subalterns in the Army, and Members of the Uncovenanted Service, who were thus in point of salary on an equality with Lieutenant-Colonels and Majors of double and treble their standing in the service. But the latter, so much older in life, labored under the disadvantage, for the most part, of the expense of wives and families to support, which but few of the much younger men of the Civil Service were yet (while only on 700 Rupees salary) burdened with. Moreover, the Officers of Her Majesty's Army had generally to leave their families in England, involving the cost of double establishments, while those who, like the Officers of the Indian Army, had their families in India, had to send their children to England for education.

The comparison of the Captains, Lieutenants, and Ensigns, with the corresponding class as to salary of the Civil Service, namely on the 12th class of the scale, was still more to the disadvantage of the Military Officers; for all Members of the Civil Service on that scale of salary were either European or Eurasian clerks, or natives, who neither held the same status in society, or were put to the cost of sending their families home; for it must be borne in mind that a large portion of the Military Officers in this class, Captains and Subalterns, were married, and many with large families.

It must be remembered also that Officers of the Army at home, who were not put to the cost of maintaining

separate establishments, were taxed only on their net pay, and that they enjoyed certain advantages of quarters, coals, candles, &c.

He trusted, therefore, that Honorable Members of this Council would concur with him in thinking that the ranks of the Army he had enumerated should be exempted from taxation. He of course intended his plea for the Officers of the Army to embrace also Officers of corresponding ranks of the Indian Navy.

MR. LEGEYT said, he would not detain the Council beyond a few minutes. He had stated on Saturday last that he would not oppose the Bill so long as it was shown that the Bill could be reduced to a practicable shape, and he thought that the amendments which had been proposed would cause the Bill to assume such a shape. He should be better satisfied if those amendments were settled before the Bill passed the second reading; but as the Council had determined upon adopting a different course, he had no objection to consider the amendments afterwards. He would say nothing about landholders, but he could not but express his regret that the Honorable Mover had so decidedly opposed the inclusion in the tax of holders of Government paper. There were persons who derived large incomes from these securities. Was it to be supposed that these incomes were not used to a large extent, and very profitably so, in mercantile transactions? Was it to be supposed that they were not lent out at high rates of interest? There was, in fact, hardly a single native proprietor of Government Securities, who did not in reality carry on business to a large extent as a lender of money. However, as the Honorable Member had declared his intention of abandoning the Bill if this class were introduced into it, he (Mr. LeGeyt) would say nothing more about it.

He should be glad to see the duration of the Bill limited to a certain period, say either five or seven years. He thought this would make it less unpalatable, and he did not see how such a limitation would affect the Bill. Some Honorable Members had looked upon it as an experiment, and that appeared to him a greater reason why some limitation of time should be fixed. He proposed to raise this question in Committee, and he would also consider the expediency of adopting the proviso which was proposed to be added to Section XX, and which was to the following effect :—

"Provided that, if any person holding any such office or employment shall satisfy the Collector or other Officer authorized as aforesaid, that the salary, fees, wages, perquisites, and profits of his office or employment do not exceed 100 Rupees per mensem, such person shall not be required to take out a license under this Act."

Why was the receiver of a salary to be exempted from paying any tax, provided his receipts did not exceed 1,200 Rupees per annum, when a trader, whose profits did not exceed 66 Rupees would be liable to be taxed? He thought it better to restrict the exemption to incomes not exceeding 600 Rupees per annum, and to exempt altogether traders whose profits did not exceed 600 Rupees, so as to place the trader and salaried clerk upon a more even footing. But he would postpone the consideration of these matters till the Bill came before the Committee.

THE VICE-PRESIDENT said, he was not aware whether the Honorable Mover was willing that the two questions raised by the Honorable Member for Bombay should be considered before the Bill was referred to a Select Committee. He (the Vice-President) considered it very desirable that, before they came to vote upon the question for the second reading, the Honorable Member should state whether the two questions, as to limiting the duration of the Bill, and exempting traders whose profits did not exceed 600 Rupees a year, would be open questions.

MR. HARINGTON said, he thought it would be better that both the alterations mentioned by the Honorable Member for Bombay should be considered in Committee. It was very desirable with regard to the lower classes that information should be received from the country at large. There was no harm in adding higher classes now; but if such additions were made in Committee, it would necessitate the re-publication of the Bill. Hereafter it would be open to any Honorable Member, either in the Select Committee, or in a Com-

mittee of the whole Council, to propose the omission of any of the classes, either from the top or from the bottom of the list.

With regard to limiting the duration of the Bill, the Honorable Member for Bombay must, he thought, be aware that, although the income tax in England was a temporary tax, and was obliged to be renewed from time to time, there was scarcely any one who did not feel that it ought never to be given up. He considered, therefore, that the best plan would be to pass the Act as a permanent Act. Five years hence, if it should be thought necessary, or advisable, it might be repealed. This part of the Honorable Member's Motion had also, he thought, better be considered in Committee.

A doubt had been expressed as to the accuracy of what he had stated on a former occasion, that, in so far as trades were concerned, although the amount of the duty would be paid in the first instance by the tradesman taking out the license, it would come eventually from the pockets of his customers. To show that he was right, he would mention the following instances. A friend of his went to the shop from which he purchased his hats to buy a hat. He selected the kind of hat which he usually bought, and asked the price—14 Rupees was the answer; his friend objected that he had never been charged more than 12 Rupees before. "Oh! but you have forgotten the increase in the duty" was the ready rejoinder. Now he thought that, if Honorable Members would make the calculation, they would find that the extra charge of 2 Rupees covered not only the additional duty, but a little more. From the hatter's his friend went to his coach-builder's to pay for some repairs made to the hood of his buggy, and considering the charge high, he remonstrated against it. Here, too, the answer was the same. The new Tariff had increased the duty on leather, of which a small piece had been used in making the repairs. Another young friend of his had twelve pairs of American Drill trowsers made by Messrs. Harman and Co., the tailors, for which he was charged 36 Rupees, or 3 Rupees per pair. Shortly after his brother arrived from England, and ordered a dozen pairs of the same description of trowsers from the same shop, but when the bill came in, he found that he had been charged 40 Rupees. The two brothers went together to Messrs. Harman and Co.'s shop to ask for an explanation of this difference in the price, and were told that the higher duty now charged on cloth was the cause. He thought, therefore, that he had good ground for what he had stated.

MR. LEGEYT said, he would withdraw his suggestions for the present, though he could not give up his position regarding the inequality of the proposed tax, or agree with the Honorable Mover in the illustrations he had brought forward.

THE VICE-PRESIDENT said, so that these questions were to remain open, and that, in Committee of the whole Council and on the third reading, Honorable Members were not to be pledged to the Bill as a permanent measure, he had no objection to let it go to the second reading.

He agreed with the Honorable and learned Judge (Sir Charles Jackson) and with the Honorable Member for Bengal, that no observations had been used in this Council which called for the remarks which had fallen from the Honorable Member (Mr. Harington). He himself had been charged with having made a violent attack on the Bill, and with having opposed it in an unfriendly spirit. He was sure that no Honorable Member present desired to oppose the Government, or to place it in a position of difficulty. He was most anxious, at all times, to give the Government his warmest support; but to say that he was to accept every measure that was set before him was another matter. He might have been earnest, but he was not violent. He had said that the Bill was founded on no principle at all; but surely that was no reason why he should be charged with having opposed the Bill in an unfriendly spirit.

There were several alterations which the Honorable Member had expressed his willingness to make in the Bill, and there were some questions which he left open to be considered in Committee before the publication of the Bill, whilst there were others which he expressly excluded from being referred to the

Committee. The three questions which were not to be open questions, were the taxation of landholders, the taxation of fundholders, and the taxation of salaries fixed by Act of Parliament. The Honorable Member had alluded to a tax upon owners of houses, whereas no one desired to levy a house tax. There were many persons residing around Calcutta who were deriving a large income from the rents of houses in Chowringhee and elsewhere. A house tax and a tax upon profits derived from the rents of houses were perfectly distinct. If the Honorable Member said that, on general principle, Government thought it inexpedient to tax the owners of houses in respect of the profits derived from them, he (the Vice-President) was willing to accept that declaration of Government. He (the Vice-President) had said on a previous occasion, that zemindars were liable to be taxed on the income which they derived from their lands; but that whether it was politic or impolitic to tax them, was a question on which he then abstained from offering any opinion. If the Government considered that it would be politically inexpedient to do so, he should not think it right to raise that question. Then, with regard to fundholders, if the Government thought it expedient to exempt them from taxation, he for one should not press the question. They all knew of the great losses which fundholders had sustained; that four per cent. papers which had formerly been at a premium had fallen to a heavy discount, and so with five and five and a half per cent. papers. Then again, as to statutory salaries, he could see no reason why they should not be taxed. It appeared to him that there was a vast difference between merely taxing these salaries and attempting to prevent the Officers paid by such salaries from discharging their duties without a license from the Collector. He entirely agreed with the Honorable and learned Judge (Sir Charles Jackson), when he said that, if the Collector should attempt to stop him (the Vice-President) from exercising his vocation as Chief Justice, he should be very likely to commit him for contempt. This Council could not give such a power to the Collector. It was quite out of the power of Government to compel the Chief Justice to take out a license to do that which he did under the express sanction of an Act of Parliament and a Commission from the Crown; but it was quite another thing to say—"you are drawing a certain income, and must pay a tax of three per cent. upon it." He apprehended that there was no difference in this respect between a salary fixed by an Act of Parliament and a salary fixed by a contract with the East India Company. The Act of Parliament in fixing such salaries never intended to say that they should not be taxed, nor did he see any difference between such salaries and those of an Uncovenanted Servant whose salary was fixed by Government. But as the Honorable Member said that Government had been advised that they could not pass such an Act, this Council could not fairly expect the Government to impose a tax when they were advised by their Law Officers that it could not be enforced if resisted. Be this however as it might, he could only say that he for one should feel that he was not acting as a man of honor it he availed himself of any exemption from payment on the ground that he could not be legally taxed. Therefore, as far as he was concerned, it would make no difference whether salaries fixed by Statute were or were not included in the Bill; for if the Bill should be passed and other incomes or salaries were taxed at three per cent., he should feel bound to pay three per cent. upon his own salary, and should, as soon as the Bill became law, at once send an order to the Civil Auditor to deduct the same amount from his salary as might be authorized to be deducted from other salaries. Whether others would do so, he knew not; but he believed that no one in this room, and no one in this country, would do otherwise.

There were several other objections to the Bill. But as they were matters, not of principle, but of detail, they would be better left to be settled in Select Committee.

With regard to the Title of the Bill, the Honorable Member for Madras had called it an Act for taxing professions. If so, he (the Vice-President) thought it would be better not to require a license, but merely a receipt, showing that they had paid the tax on their profession.

Another question which the Honorable Mover had left open was whether Civil and Military salaries ought to be included in the Bill. He (the Vice-President) thought that they ought to be, for in what position would the Government be if left to tax them indirectly. He doubted very much whether Government could enforce the payment of the tax if a party refused to pay it. For the first few months they would probably be obliged to resort to dismissal for refusal to pay the tax. But he questioned whether Government could take such a step in the case of a Commissioned or a Covenanted Officer, and he thought that it would be far better therefore that this matter should be settled by legislation. Suppose again, the Executive Government, after a year or two, should think fit to withdraw the tax from their employees, would that be fair to those who would continue to be taxed under the Bill which would still be in force? He thought not. The Honorable Member had given no pledge from Government, that every servant of Government would be taxed as long as this Bill should continue in force. He (the Vice-President) thought that all should be taxed alike, and if no one else would do so, he should move the insertion of a Clause to the effect that a tax of three per cent. should be levied on the salaries of all Civil Servants and all Military Officers in Civil employ and on the net pay of every Military Officer.

The Honorable Member for Madras had put forward an extraordinary argument against the taxation of Military Officers. He said that they were compelled to borrow money at the rate of about eighteen per cent. discount to buy their superior Officers out. No doubt Commissions were bought and sold in Her Majesty's Army, subject to certain Regulations. But the practice adopted in this country of paying Officers to retire, though perhaps tacitly allowed, had been held to be illegal. Such a contract could not be sued on. Time and custom might to some extent sanction the practice, but that was not a consideration which could be admitted by this Council. Suppose anyone were to go to the Lord Chancellor or to the Prime Minister of England and offer him a sum of £10,000 to retire, or to the Chief Justice, or any one holding a high and responsible position. What would be thought of such conduct? Would he not be indicted? If any one were to come to him (the Vice-President) and offer to buy him out of Her Majesty's service, he should consider it an insult. Such a person would be guilty of a misdemeanor. But the argument of the Honorable Member for Madras was that Officers in the Army ought not to be taxed, because they were put to considerable expense in borrowing money to purchase out their superior Officers, and the Council were called upon to accept that as a reason for exempting Military Officers from being taxed under the Bill.

There was another and a most important matter on which he desired to say a few words The Honorable Mover had said that Honorable Members of this Council had claimed for themselves an independence which did not belong to them, and had arrogated to themselves the power of controlling the expenditure of Government. He (the Vice-President) must say, in reference to that observation, that when the expenditure of Government exceeded its income, and this Council were called upon to create a tax to make good the deficiency, the Council had a right to ask what deficiency had arisen, how it had occurred, and what measures were proposed to meet such deficiency. If the Executive Government asked the Council to impose a tax, surely it was incumbent on them to show the Council why the tax was wanted, and the Council would then be in a position to know what it ought to do. Was it to be supposed that this Council was bound to pass every crude Act that Government might think fit to bring before it, and an Act too which its Mover himself had admitted was founded on no principle? Were they to act independently in the exercise of the important functions vested in them, or were they to become mere registrars of the decrees of Government? Were they not to be allowed to express an opinion or to make any enquiry or suggestion on a matter which came before them, without being told that they were arrogating to themselves a power which did not belong to them? For what purpose were they assembled in that Chamber? Were

they to sit there as mere machines in the hands of the Executive Government? Were they not Councillors of the Governor-General of India for making laws? Were they to be Councillors and yet not to advise? or were they to give counsel without asking any questions, or knowing the circumstances under which their advice was to be given? No, they were bound to advise and to act independently And according to the dictates of their conscience in giving that advice. If that were not so, then the sooner this Council was abolished the better. He, for one, must say that, so long as he had the honor of a seat in the Council, he should claim the right to exercise within those walls a free and independent judgment, and to abstain from giving any vote except after mature deliberation and according to the dictates of his own conscience.

MR. HARINGTON, after the protracted debate which had taken place, would say only a very few words by way of reply. With regard to the Salaries of Government Officers he had already given his reasons for considering that they should not be included in the Bill. The point on which he particularly wished to offer a few remarks was, as to the amount of information relative to the state of the finances, which was required to be laid before the Council on the introduction of the present Bill. He submitted that all the information which was really necessary had been given. It was impossible, as he had already mentioned, to lay before the Council any correct or detailed statement of what would be the probable future expenditure. He had quoted word for word that part of the speech of His Excellency the Governor-General, delivered in March last, in which His Lordship placed before the Council the fullest information relative to the condition of the public finances at that date. The deficit then expected amounted to the very large sum of thirteen crores of Rupees. The accounts had not been made up, but that was the amount of the deficit anticipated. He said that the fears of the Governor-General as to the probable amount of the deficit at the end of the current financial year had been realized. He stated that reductions had been made to meet this deficiency, and that further reductions would be carried into effect as rapidly as circumstances would admit. He particularly stated that the numerical strength of all the Native Regiments in India, both Regular and Irregular, had been greatly reduced; that many of the Police Levies had been disbanded; that further considerable reductions in this force might be found practicable; but that their extent must depend very much upon the decision which might be arrived at in England upon the important question of the reorganization of the Native Army of Bengal. What he then said was surely enough to show that Government had not been idle. It was only within the last few days that a reduction of 5,000 men had been ordered in the Oude Police, of whom 1,500 were Cavalry. This reduction might have been effected at once, but it was not thought prudent by the Honorable and gallant Member on his left (Sir James Outram) that so large a body of men should be turned loose upon the country at once, particularly as it was known that in Nepal and some parts of Bundelkund there were large bodies of rebels, whom the discharged men might at once join; and it was thought better, therefore, that they should be dismissed gradually, and as much as possible with their own consent. Then there was the Commission sitting at Bombay to enquire what reductions might be made in the Military expenditure of the country. He had also mentioned that all grants-in-aid for promoting education amongst the natives had been stopped, and that all public works which were not absolutely necessary had been suspended.

He had been charged with saying that the Council had claimed for itself an independence which did not belong to it. What he really said was that, looking to what had fallen from the Honorable and learned Judge opposite (Sir Charles Jackson) and the Honorable Member for Bengal, the Council appeared to him to be verging upon the functions of the House of Commons, and that, if they assumed those functions, they should also take upon themselves the responsibilities of the Executive Government which, he remarked, was simply impossible under the present constitution of the Council. He certainly considered the attack made upon the

Bill by the Honorable and learned Vice-President and the Honorable Members opposite, to have been a violent attack, and he had therefore used that epithet in referring to it, but not in an offensive sense. The Bill had been called a crude Bill, a Bill without any principle, and the measure had also been termed preposterous because it omitted certain classes. Under the supposition that the Honorable and learned Vice-President, in proposing that the Bill should be referred to a Select Committee before it was read a second time, did so with a view to an entire alteration in its character, he (Mr. Harington) certainly thought that the instructions to the Committee, if they emanated from the Honorable and learned Vice-President, would not be conceived in any kind or friendly spirit. Before resuming his seat, he begged to thank the Council for the consideration which they had shown him, and to apologize to the Council if, in the heat of debate, he had expressed himself with too great warmth.

The Motion was then carried, and the Bill read a second time.

MR. HARINGTON moved that the Standing Orders be suspended, in order that the Council might resolve itself into a Committee on the Bill, for the purpose of considering proposed amendments therein.

SIR JAMES OUTRAM seconded the Motion, which was then carried.

MR. HARINGTON moved that the Council resolve itself into a Committee on the Bill.

Agreed to.

Section I was passed after amendments providing for the repeal of Regulation IV. 1818 of the Madras Code.

Section VIII was passed with a revised Schedule of sums payable on licenses.

Section IX was passed after an amendment requiring sums payable upon licenses to approximate as nearly as possible to three per cent. on the annual net profits or gains accruing from trades and professions.

MR. HARINGTON moved the introduction of the following Section after Section IX :—

"Any person who shall satisfy the Collector or other Officer authorized as aforesaid, that the aggregate annual amount of the net profits or gains of the trade, business, or profession, carried on by such person (estimated according to the provisions of the last preceding Section) is less than a sum which, so estimated, would render him liable to assessment under Class XVII of Section VIII, he shall be exempted from taking out a license under this Act."

Agreed to.

Section X was omitted on the Motion of Mr. Harington.

MR. HARINGTON moved the introduction of the following Section after Section XI :—

"In order to enable the Collector or other Officer authorized as aforesaid, to determine under what classes persons requiring to be licensed shall be assessed, and what sums shall be paid in respect of licenses granted under this Act, he may cause to be sent to any person supposed to be liable to the payment of the tax hereby imposed, a Schedule to be filled up with such information respecting the trade, business, or profession carried on by such person, and the amount of the annual profits or gains accruing therefrom, the number and names of persons holding any office or employment under him, and their salaries, fees, and wages, as the Collector or other Officer authorized as aforesaid may judge necessary for the purpose of such assessment. The schedule shall be filled up in writing, and dated, and shall contain a declaration signed by such person that to the best of his belief the schedule is a true return of the matters therein contained. Such return shall be delivered to the office of the Collector or other Officer as aforesaid, by every person to whom it is sent, whether or not liable to the payment of such tax ; and whoever refuses, neglects, or omits, duly to fill up and return such schedule within twenty-one days from the receipt thereof, or knowingly gives therein any incorrect or false return, shall be liable to a penalty not exceeding five hundred Rupees."

MR. LEGEYT moved the omission of the words "or knowingly gives therein any incorrect or false return." In doing so, he said, he thought that a penalty of five hundred Rupees was a very inadequate punishment for such an offence as knowingly giving incorrect or false Schedules, and that it would be more appropriate to attach to it the penalties of perjury.

Agreed to.

THE CHAIRMAN moved the insertion of the following words at the end of the Section :—

"Or if he be a person liable to be assessed, the Collector or other Officer as aforesaid may

assess him under any of the classes mentioned in Section VIII of this Act; and no appeal shall lie from such assessment, on the ground that such person had been assessed under too high a class with reference to the provisions of Section IX of this Act."

Agreed to.

MR. LEGEYT moved the addition of the following words to the Section:—

"Or if such person knowingly gives therein any incorrect or false return, he shall be liable to the penalties provided for perjury."

The Motion was carried, and the Section as amended then passed.

MR. HARINGTON moved the introduction of the following Section after the above:—

"The Collector or other Officer authorized as aforesaid may summon any person whom he shall think able to give evidence for the purpose of enabling him to determine under which of the classes mentioned in Section VIII of this Act any person should be assessed, and may examine such person as to any such matter. The Collector or other Officer as aforesaid may also require the person summoned to produce any books or documents in his possession or power relating to the trade, business, or profession of any person supposed to be liable to assessment or to the amount of the annual profits or gains accruing therefrom. If the person summoned shall refuse to answer any lawful question of the Collector or other Officer as aforesaid, or shall knowingly give an incorrect answer, or shall refuse to produce any such books or documents as aforesaid, he shall be liable to a penalty not exceeding five hundred Rupees, or if he be a person liable to be assessed, the Collector or other Officer as aforesaid may assess under any of the classes mentioned in Section VIII of this Act, and no appeal shall lie from such assessment on the ground that such person had been assessed under too high a class with reference to the provisions of Section IX of this Act."

THE CHAIRMAN moved the insertion of the words "or of any person who has appealed against such assessment" after the words "liable to assessment."

Agreed to.

THE CHAIRMAN moved the substitution of the words "from such trade, business, or profession" for the word "therefrom."

The Motion was carried, and the Section as amended then passed.

MR. HARINGTON moved the introduction of the following Section after Section XVIII:—

"No person required by this Act to take out a license, shall be allowed to recover in any judicial suit or proceeding, any money, debt, or charge claimed by him in respect of the trade, business, or profession carried on by him, unless such person shall prove to the satisfaction of the Judge or Officer presiding at the trial, that, at the time when the cause of action accrued, he had duly obtained a license in conformity with this Act."

The Section was passed after verbal amendments, on the Motion of the Chairman.

MR. HARINGTON moved the addition of the following words to Section XX:—

"And shall be assessed (with reference to the provisions of Section IX of this Act) upon an estimate of the annual salary, fees, wages, perquisites, and profits of such offices or employments. Provided that, if any person holding any such office or employment shall satisfy the Collector or other Officer authorized as aforesaid, that the salary, fees, wages, perquisites, and profits of his office or employment do not exceed one hundred Rupees per mensem, such person shall not be required to take out a license under this Act."

The Motion was carried, and the Section as amended then passed.

THE CHAIRMAN moved the introduction of the following Section after Section XX:—

"Every Civil Officer and every Military Officer in Civil employ shall pay at the rate of three per cent. per annum upon the amount of his salary, and the same may be deducted by Government from such salary.

After some discussion, the Council divided:—

Ayes 5.	*Noes* 2.
Sir Charles Jackson.	Mr. Sconce.
Mr. Forbes.	Mr. Harington.
Mr. LeGeyt.	
Sir James Outram.	
The Chairman.	

So the Section was carried.

THE CHAIRMAN moved the introduction of the following Section after the above:—

"Every Military Officer shall pay a tax of three per cent. per annum upon the amount of his Regimental pay, exclusive of allowances, and also upon any Staff pay, and the tax may be deducted by Government from such pay."

MR. FORBES wished to say a very few words on what fell from the Honorable and learned Chief Justice in the debate on the second reading of this Bill, regarding the illegality of the sale of Commissions in the Army. The learned Judge had said that such sales were illegal; he had likened them to the sale of the high office which he so ably filled, and had characterized as extraordinary the argument which he (Mr. Forbes) had endeavored to raise in favor of the exemption of Military men from the operation of this tax, from the fact that they purchased their steps. Now he thought that this was a question that could not be decided on only a strict legal view, and he could not admit that there was any similarity between the sale of his step by an Officer in the Army, and the sale of so high an office as a Judgeship. He did not think that the Honorable and learned Judge would himself affirm that he would hold in similar estimation the two Officers who bought and sold a Commission, and the two men who bought and sold a Judgeship. The sale of a Judgeship would, no doubt, be a high crime and misdemeanor; the sale of an Army Commission was a matter of daily occurrence. The one would be a great offence against the Crown, in whose gift the Judgeships were; the other, as was notorious, was done with the approbation and consent of the authority whom the Officer served.

SIR CHARLES JACKSON moved the insertion of the words "above the rank of Captain" after the word "Officer."

After some discussion, the Motion was by leave withdrawn.

The original question being then put, the Council divided :—

Ayes 2.	*Noes* 5.
Sir Charles Jackson.	Mr. Sconce.
The Chairman.	Mr. Forbes.
	Mr. LeGeyt.
	Mr. Harington.
	Sir James Outram.

So the Motion was negatived.

SIR CHARLES JACKSON moved the introduction of the following Section before Section XXI :—

"Every Military Officer on the General, Divisional, Brigade, and Personal Staff, shall pay a tax at the rate of three per cent. per annum on the amount of his pay and allowances, and the amount may be deducted by Government from his pay and allowances."

MR. LEGEYT moved, by way of amendment, to insert the word "staff" before the words "pay and allowances."

The amendment being put, the Council divided :—

Ayes 2.	*Noes* 5.
Mr. LeGeyt.	Mr. Sconce.
Sir James Outram.	Sir C. Jackson.
	Mr. Forbes.
	Mr. Harington.
	The Chairman.

So the amendment was negatived.

The original question being then put, the Council divided :—

Ayes 6.	*Noes* 1.
Mr. Sconce.	Mr. LeGeyt.
Sir C. Jackson.	
Mr. Forbes.	
Mr. Harington.	
Sir James Outram.	
The Chairman.	

So the Motion was carried.

THE CHAIRMAN moved the addition of the following proviso to the new Section 20*a* relating to Civil Officers and Military Officers in Civil employ :—

"Provided that, if the salary of such Officer do not exceed 100 Rupees, he shall not be taxed."

Agreed to.

THE CHAIRMAN moved the omission of Section XXII, which provided that the Act should not apply to persons holding office under Government.

Agreed to.

THE CHAIRMAN went back to Section XX, and moved a verbal amendment therein, which was carried.

MR. HARINGTON moved that the following new Section be introduced before Section XXIII :—

"The provisions of this Act shall not apply to any person who shall hold any office, employment, or commission under Her Majesty, or under the Government of India, the salary

of which office or employment has been fixed by Act of Parliament."

He said that, in proposing the introduction of this Section, he desired to repeat what he had mentioned in moving the second reading of the Bill, namely, that it was not the intention of the Governor-General, or of the other Members of the Government present with the Government, that their salaries should be exempted, and they would accordingly be subjected to the proposed reduction from the date on which the Bill should pass into law. But in their case, as well as in the cases of the other Officers whose salaries were also fixed by Act of Parliament, it would be necessary for the Home Government to apply to Parliament for an Act of the Imperial Legislature, to give legal authority to the extension of the measure to them, and steps would immediately be taken for obtaining that authority.

Agreed to.

MR. HARINGTON moved the omission of the Schedule.

Agreed to.

The Council having resumed its sitting, the Bill was reported.

MR. HARINGTON moved that the Bill be referred to a Select Committee consisting of the Vice-President, Mr. LeGeyt, Mr. Forbes, Mr. Sconce, and the Mover.

Agreed to.

MALABAR OUTRAGES.

MR. FORBES moved that the Bill "for the suppression of Outrages in the District of Malabar in the Presidency of Fort St. George" be read a third time and passed.

The Motion was carried, and the Bill read a third time.

CRIMINAL PROCEDURE.

On the Order of the Day being read for the adjourned Committee of the whole Council on the Bill "for simplifying the Procedure of the Courts of Criminal Judicature not established by Royal Charter," the Council resolved itself into a Committee for the further consideration of the Bill.

The postponed Section 7 of the proposed Jury Rules was passed, with the insertion of "eight" in the blank as the number of Jurors to be summoned, and after other verbal amendments

Section 8, which related to the form and service of summons, was passed after an amendment, on the Motion of Mr. LEGEYT, requiring the service to be made by the Judge, "through the Court's own Officers, or the Officers of the Magistrate of the district in which the Juror resides."

Section 9, which empowered the Court to summon another set of Jurors, when one set was not enough, was passed as it stood.

Mr. HARINGTON moved the introduction of the following Section after Section 9:—

"If any person summoned to serve as a Juror be an Officer of Government, the summons shall be transmitted to such person through the Head Officer of the Office in which he is employed, and the Court may excuse the attendance of such person if it shall appear on the representation of such Head Officer that such person cannot serve as a Juror without inconvenience to the Public Service."

Agreed to.

Sections 10 to 14 were passed as they stood.

Section 15 prescribed the grounds of objection to be taken to a Juror.

THE CHAIRMAN moved the omission of the fourth ground, which was as follows:—

"Having formed such an opinion of the guilt or innocence of the defendant as, in the opinion of the Juror himself, renders him not an impartial judge."

Agreed to

After a verbal amendment in the fifth ground, the Section was then passed.

Sections 16 to 18 were passed as they stood.

THE CHAIRMAN moved the insertion of the following Section after Section 18:—

"Whenever any Jury trial is to be had, in which the accused person or one of the persons accused is entitled to a Jury constituted under the provisions of Section 230, the Court of Session shall, three days at the least before the day fixed for holding such trial, cause not less than four of the persons named in the revised list of Jurors of the race or class to which the accused belongs to be summoned; the Court shall also at the same time

cause as many other persons named in the revised list as seem to the Court to be needed for such trial to be summoned. The names shall be drawn by lot, excluding those who have served within six months, unless when the number cannot be made up without them."

Agreed to.

THE CHAIRMAN then went back and proposed a verbal amendment in Section 236 of the Bill, which was carried.

Mr. LEGEYT moved the introduction of the following new Section after Section 236:—

"The Court of Session may order such reasonable subsistence money, the amount per diem to be fixed from time to time by the local Government with the sanction of the Governor General in Council, to be paid to every Juryman in attendance under a summons, which shall be paid by the Collector on the production of such order."

He said he felt convinced that, unless some reasonable subsistence were provided for bringing persons away from their homes, they would find excuses for keeping away. He thought it very hard to take them away from their usual daily occupations, and that a less objectionable way to do so would be as now proposed by him.

After some little discussion the Section was put and negatived; and the further consideration of the Bill postponed on the Motion of SIR JAMES OUTRAM.

STANDING ORDERS.

MR. HARINGTON postponed the Motion (which stood in the Orders of the Day) for a Committee of the whole Council on the Report of the Select Committee on the Message from the Governor-General in Council calling for a report on the practical working of the Standing Rules and Orders of the Legislative Council.

MALABAR OUTRAGES.

MR. FORBES moved that Mr. Harington be requested to take the Bill "for the suppression of Outrages in the District of Malabar in the Presidency of Fort St. George" to the Governor-General for his assent.

Agreed to.

NATIVE PASSENGER VESSELS (BAY OF BENGAL).

MR. FORBES moved that the Bill "to prevent the overcrowding of Vessels carrying Native Passengers in the Bay of Bengal" be referred to a Select Committee consisting of Mr LeGeyt, Mr. Sconce, and the Mover.

Agreed to.

The Council adjourned at 5 o'clock, on the Motion of Sir James Outram, to Thursday, the 1st of September next

---

Thursday, September 1, 1859.

PRESENT:

The Hon'ble the Chief Justice, *Vice-President*, in the Chair.

Hon. Lieut.-Genl. Sir James Outram,	Hon. Sir C. R. M. Jackson,
Hon. H. B. Harington,	and
P. W. LeGeyt, Esq.,	A. Sconce, Esq.
H. Forbes, Esq.,	

LICENSING OF TRADES AND PROFESSIONS.

THE CLERK presented to the Council a Petition from the Calcutta Trades Association against the Bill "for the licensing of Trades and Professions."

MR. HARINGTON moved that the above Petition be referred to the Select Committee on the Bill.

Agreed to.

CRIMINAL PROCEDURE.

The Order of the Day being read for the adjourned Committee of the whole Council on the Bill "for simplifying the Procedure of the Courts of Criminal Judicature not established by Royal Charter," the Council resolved itself into a Committee for the further consideration of the Bill.

The postponed Section 255 provided as follows:—

"If the case is one in which, if the defendant be convicted, he is liable to sentence of death, the Court of Session shall record the conviction, and refer the case to the Sudder Court, with a statement in writing of its opinion as to the sentence which should be passed upon the accused, with the reasons for such opinion; and in cases tried by Jury, the Court of Session shall report the substance of its direction to the Jury."

THE CHAIRMAN moved the omission of all the words after "the Court of Session shall" in the beginning of the Section, and the substitution of the following:—

"Pass sentence, and if sentence of death be passed, it shall not be executed without the confirmation of the Sudder Court. In any case submitted to the Sudder Court for confirmation of the sentence, the Court may either confirm the sentence or pass any other sentence warranted by law."

MR HARINGTON said, he preferred the Section as framed by the Select Committee, and should vote against the amendment of the Honorable and learned Chairman. If that amendment were adopted, and if the Code of Criminal Procedure should come into operation before the Penal Code became law, some alteration of the present law must be made. According to the law now in force in the Presidencies of Bengal and Madras, a Sessions Judge could not pass sentence of punishment in a case of murder, but must refer his proceedings to the Sudder Court, and that Court, if it concurred in the conviction of the accused, could sentence him either to be hanged or to be imprisoned or transported for life, or it could pass any other sentence in the case that it deemed proper. Under the Bombay Code, he believed that, on a conviction for murder, the Sessions Judges could sentence the accused to transportation or imprisonment for life or to solitary confinement with corporal punishment. He did not think that this discretionary power should be vested in any subordinate Court. According to the Penal Code, the only alternative punishment to death was transportation for life, and he (Mr Harington) thought that the power of determining which of these two punishments should be awarded should be exercised by the Sudder Court alone. On their first appointment to the Bench many of the Sessions Judges were necessarily young and inexperienced, for we were not heaven born Judges, though we had been called so at home, and he did not think that in cases of murder it should be left to any Court below the Sudder to decide whether the penalty of death, which the law had prescribed for that crime, should be inflicted, or whether some other punishment, though allowed by law, should be substituted. It was not to be supposed that the Judges of the Sudder Court would pass sentence or give any order merely upon the report of the Sessions Judge; they would go through the proceedings and judge for themselves whether the record contained sufficient proof of the guilt of the accused to warrant a conviction, and, in that case, whether there were any mitigating circumstances justifying the remission of capital punishment.

The Section, as it now stood, introduced no new rule. It merely proposed to maintain a rule which had been in operation in India since 1793. The question then arose, had the rule worked well, what had been its practical effect, and was there any reason for altering it? If it could be shown that the operation of the rule had been attended with injustice to accused parties, or that it had caused any inconvenience in the administration of justice, he would withdraw his objections. But he did not think that any one who had had any practical acquaintance with the working of the rule could urge this as a ground for its discontinuance.

MR LEGEYT said, it was his intention to support the amendment, and he was disposed to do so from his experience of the working of the law in the Bombay Presidency. There the law required the Sessions Judge to pass sentence in every case. When a sentence exceeded a certain limit, the case was referred to the Sudder Adawlut for confirmation, and that Court had the power to confirm, mitigate, or annul the sentence of the lower Courts. In cases of murder, as had been stated by the Honorable Member (Mr Harington), the Sessions Courts in Bombay possessed the discretionary power of sentencing the accused to transportation for life, imprisonment for life, or to solitary confinement for two years, with corporal punishment. He had seen all these sentences resorted to. He had had fourteen years' experience of the working of the Sudder Court, and he recollected very few cases in which that Court had found fault with the leniency of a sentence by a Sessions Court. The effect of a sentence passed immediately on the close of a trial was beneficial to the by-standers and the people generally. He thought how-

ever that, when a trial was closed without the sentence being passed, people would not know on what principle the punishment afterwards awarded was come to. There could not be a more fit or proper person to form an opinion whether a capital punishment was called for than the Judge who had tried the case and had heard the evidence. As however he might make a mistake and pass a wrong sentence, it was well and proper in a case of life and death that the sentence which was irrevocable should go up to another and a higher Court for confirmation. For these reasons he thought the amendment was just what was required and would be a great improvement in the law as provided in the Bill, and he should therefore support the amendment.

MR. SCONCE said, he would state shortly the objections which he had to the adoption of the proposed amendment. Murder being the highest crime known under the law, the punishment imposed for it was death. Cases might occur where the question would arise whether, instead of enforcing sentence of death, a lesser punishment might not be inflicted. Substantially, however, in cases of murder, death was the proper punishment, and in practice the point for decision was whether the liability to a capital sentence having been incurred, a lesser punishment should be substituted; not whether the lesser punishment being the ordinary penalty, a capital sentence should be superadded. It seemed to him, therefore, that a higher and more experienced Court was in a far better position to determine in what cases a special provision of the law should be departed from, than an Officer of less mature experience. It was, he thought, not consistent with the dignity and position of the Sudder Court to send up to it only such trials as, in the opinion of the Sessions Judges, required a capital sentence to be enforced, as if it should be the duty of the Sudder Court simply to register the judgment of the lower Court. Now the grounds for not inflicting capital sentences were delicate and various; and a proper measure of the punishment in each case to be imposed was more likely to be taken in the Sudder Court than by twenty or five-and-twenty Sessions Judges. These were the reasons which induced him to think the Section as it stood preferable to the proposed amendment.

THE CHAIRMAN said that, as he understood the Code as it now stood, a Sessions Judge would in ordinary cases have the power to sentence to transportation for life or any minor punishment. But if he had to try any offence punishable with death, he could not pass sentence at all. There was no other case provided for by this Code, in which it would be necessary for the Sessions Judge to send up the case to the Sudder Court for the sentence to be passed, than the single case of an offence punishable with death.

Two objections had been made to the amendment which he had proposed. The first was that, in cases punishable with death or with an alternative punishment, the Sessions Judge, instead of sending up a case to the Sudder Court, would pass a sentence short of death to avoid the necessity of sending up the case for the sanction of the Sudder Court, and that in consequence persons who might be punished with death would get off with transportation for life or some minor punishment. He (the Chairman) could hardly conceive that any Judge, who knew a prisoner to be deserving of death, would punish him with transportation for life, merely to avoid the reference to the Sudder Court. He (the Chairman) was of opinion that a Judge who was capable of acting so was not fit to be a Judge.

The next objection was that many Sessions Judges were too young and inexperienced to be invested with the power of passing sentence of death. But, he would ask, why should the Sudder Court have to pass the sentence? The Judge who was competent to try a case and recommend what sentence ought to be passed ought to be competent to pass the sentence himself. If he was not competent to pass sentence, he ought not to be entrusted with the power of trial. It was well known that, in many of the Non-Regulation Provinces, the Judge who tried for murder actually passed sentence of death, although he could not carry the sentence into execution with-

out the confirmation of the Supreme Government. In Non-Regulation Provinces a Judge could be trusted with the power of passing sentence of death, but in the Regulation Provinces it was said it would be wrong that a prisoner should be sentenced to death, except by the Sudder Court.

In England, in cases where death was the only punishment, there was no discretion allowed to the Judge, who must either pass or record sentence of death. He might refer the case to the Secretary of State, with a recommendation either for pardon or commutation of the sentence passed. In this country the Sudder Court was said to try the prisoner upon the record. This, if it were substantially the case, would be most objectionable. When he first came out to this country, he remembered having been much surprised to hear that the Sudder Court tried prisoners in capital cases, in their absence and upon the record, without seeing the witnesses or hearing their evidence, and that the committing officer recommended the punishment to be inflicted. It struck him as being very objectionable that the committing officer should be allowed to prejudge the case by recording what sentence ought to be passed. But he was glad to find upon investigation that, in substance, this was not really the case. In reality the prisoner was tried by the Sessions Judge, though that officer could not pass sentence, but only recommend what sentence should be passed. He had constantly seen it remarked by the late Honorable Court of Directors that trial upon the record, and without hearing the witnesses, was most objectionable. He should be very sorry himself to try a man and to sentence him to death without having the witnesses, and he could not require others to do what he would not do himself. According to English law, a prisoner was required to be present and to be asked whether he had any thing to say why sentence of death should not be passed. He had a right to move in arrest of judgment, and to urge that the act of which he had been found guilty did not amount to a capital offence. Suppose a prisoner were to say to the Sessions Judge, "You are going to send my case to the Sudder Court for trial, or for sentence, let me go up and be present whilst the trial goes on, and be heard in my defence, or let me show cause why sentence of death should not be passed against me." The Sessions Judge would not comply with the application according to the proposed law The prisoner would not be told a syllable of what was to take place. The Judge would not even tell him that he was going to recommend the Sudder Court to pass sentence of death upon him. The Court would be closed, the prisoner would be taken back to the prison and there locked up, and he would know nothing more until he heard of the sentence passed upon him by the Sudder Court

For these reasons he (the Chairman) should press his amendment It might be however that the amendment did not go far enough, and it might be said that the Sudder Court should have the power of acquittal when a prisoner was manifestly innocent or when a wrong sentence was passed upon him He (the Chairman) had no objection to giving the Sudder Court the power of reversing or mitigating a sentence, and of ordering a new trial, in any case in which a sentence of death might be sent up for confirmation.

SIR CHARLES JACKSON said, he objected entirely to the Sudder Court having the power to try upon record. When he was Advocate General, the case of Sonatun Naik, for whom he was engaged as Counsel, was heard before the Sudder Court. Sonatun Naik was charged with murder before a Judge at Midnapore, who partly heard the case and examined the greater number of witnesses called That Judge was then removed, before he had finished the case, to another Station, and another Judge was appointed to Midnapore, who then took up the case as it stood at the departure of his predecessor, and examined a few more witnesses and then recorded his opinion that the prisoner should be hanged. This case, so tried, came up before the Sudder Court, and he as Counsel objected that it was a trial upon record, and that it was opposed to all principle that the Judge should recommend the sentence of death when he had not heard all the witnesses

The Sudder Court (Mr. John Russell Colvin presiding) saw no objection to the course pursued in the case, and sentenced the prisoner to be hanged, whereupon he (Sir Charles Jackson) obtained a reprieve and referred the matter to Government. The Bengal Government agreed in opinion with the Sudder Court, and the prisoner, thus tried, was actually executed. He never saw the written answer on which Government proceeded, if any such were recorded, but he was afterwards informed verbally by a Government official that the English Law was analogous, inasmuch as a Justice in Chancery, when newly appointed, took up the proceedings of his predecessor as they stood, and never commenced the enquiry again *de novo*. To his great surprise, however, subsequently, when he was acting as Legislative Member of the Supreme Government, shortly before the arrival of the Honorable and learned Chairman, a Despatch arrived from the Court of Directors, in which they referred to this case and expressed a desire that steps should be taken to prevent the occurrence of such a case. Bearing this case in mind, he was not surprised at the views of the Honorable Member for the North-Western Provinces, but he should nevertheless vote in favor of the amendment proposed from the Chair.

After some further discussion the Council divided :—

Ayes 4.	*Noes* 3.
Sir Charles Jackson.	Mr. Sconce.
Mr. LeGeyt.	Mr. Forbes.
Sir James Outram.	Mr. Harington.
The Chairman.	

So the Motion was carried.

THE CHAIRMAN moved the addition of the following words to the above Section :—

"Or may reverse the conviction and order a new trial."

MR. HARINGTON said, he should not oppose the introduction of these words, because it would always be in the power of the Government to pardon the prisoner.

The Motion was carried, and the Section as amended then passed.

Section 257 provided as follows :—

"A case referred by a Court of Session for the sentence of the Sudder Court shall be heard by a Court constituted by three Judges of the said Sudder Court.* The Sudder Court shall review the depositions of the witnesses, the conviction, and in cases tried by Jury, the direction of the Judge, and shall pass such judgment and sentence as to the Court shall seem right. The sentence shall be according to the opinion of the majority."

Several amendments were agreed to in this Section, on the Motion of the Chairman, which were rendered necessary by the alterations made in Section 255, and which made the Section run as follows :—

"A case referred by a Court of Session for confirmation of a sentence of the Court of Session shall be heard by a Court constituted by two or more Judges of the said Sudder Court. The confirmation of the sentence, or any new sentence or order passed, shall be signed by not less than two of such Judges."

After some amendments in Section 258, the further consideration of that Section and of Sections 259 to 262 was postponed.

Section 263, which provided that "in cases tried without a Jury the Court in its judgment shall record the reason for its decision," was negatived.

Sections 264 to 270 were passed as they stood.

Chapter XXII, Sections 271 to 274, contained provisions relating to the Sudder Court as a Court of Revision.

MR. LEGEYT said, he had some amendments to submit to the Council with respect to this Chapter regarding Revisions and the following Chapter regarding Appeals. It appeared to him that granting an appeal of right in Criminal cases, which was so amply afforded by this Code, was a mistake and defect. They had tried this system for a great while, and found that the facility of appeals in Criminal cases was an obstruction to justice. Reading these two Chapters, it would appear that nothing was more important than allowing appeals. It appeared to him that Chapter XXIII, relating to appeals, invited every convict to seek a reversal of the sentence passed upon him. It was not his (Mr. LeGeyt's) intention to propose to shut the door on the amendment or reversal of an unjust sentence. But to hold out hopes to a convict, both before and after conviction, to set aside conviction, was what appeared to him (Mr. LeGeyt) to be highly improper. Chapter XXIII, which provided for certain revision, was

all very right and proper, and to such revision he was anxious of restricting the re-investigation of cases in which sentence had been passed. He had therefore, with this view, prepared two Sections, which, if adopted by the Council, would remove what he considered very great defects in the Code.

These Sections were as follows:—

"It shall be lawful for the Sudder Court to call for and examine the records of any subordinate Court, for the purpose of satisfying itself as to the legality of any sentence or order passed, and as to the regularity of the proceedings of such subordinate Court. If the Sudder Court shall be of opinion that the sentence or order is contrary to law, the Court shall reverse the same, and pass such judgment and sentence as to the Court shall seem right, or, if it deem necessary, to order a new trial.

"It shall be at all times lawful for a Court of Session and for a Magistrate, or other Officer exercising the powers of a Magistrate, to call for and examine the records of any Court immediately subordinate to their respective Courts, for the purpose of satisfying themselves as to the legality of any sentence or order passed, and as to the regularity of the proceedings of such Subordinate Courts. If the Court or Magistrate shall be of opinion that the sentence or order is contrary to law, the Court or Magistrate shall annul the same, and pass such judgment and sentence as shall seem right, provided that in no case the sentence be more severe than the sentence originally passed."

After some conversation the further consideration of this Chapter and of Chapter XXIII Sections 275 to 282 was postponed.

MR. HARINGTON moved the introduction of the following Section after Section 282:—

"Every sentence or final order of a Court or Magistrate, together with the reasons for making or passing the same, shall be written in the vernacular language of the presiding Officer, and shall be dated and signed by such Officer at the time of his making or passing the same, and the original shall be filed with the record or proceedings, and a translation thereof, where the original is recorded in a different language to that in ordinary use in proceedings before such Officer, shall be incorporated in the record of the sentence or order."

Agreed to.

MR. HARINGTON moved the introduction of the following Section after the above:—

"If the vernacular language of the presiding Officer be not English, and the Officer be sufficiently conversant with the English language to be able to write the sentence or final order in a clear and intelligible manner in that language, and prefer to write the same in that language, the sentence or final order may be written in English."

Agreed to.

The consideration of Section 283 was postponed.

Sections 284 and 285 were passed as they stood.

The consideration of Section 286 was postponed.

Section 287 provided that—

"Nothing in this Act shall be held to alter or affect the jurisdiction or procedure in Criminal cases of Heads of Villages under the provisions of the Madras Code, or the jurisdiction or procedure in Criminal cases of District or Village Police Officers under the provisions of the Bombay Code, &c."

MR. FORBES said, he had an amendment to propose in this Section. The object of it was to give the District or Village Police in Madras the benefit of the exception which this Section, as it now stood, gave to the District or Village Police in Bombay. When the Code was before the Select Committee, it was proposed that its provisions should be applicable to the Madras Police, and the change he wished now to introduce was consequent on a wish expressed by the Government of Madras that the Police of that Presidency should have its own Procedure. The Bill for the organization of the Madras Police Force was framed on the principle of an entire separation of the Police from the Magisterial Department, and its constitution as a distinct department under the immediate control of Government.

He believed Honorable Members were willing that the Government of Madras should be allowed to carry out the proposed system in the manner they thought most fit, so as to give the experiment a fair and full trial. He should therefore move the omission of the words "in Criminal cases of Heads of Villages under the provisions of the Madras Code, or the jurisdiction or procedure in Criminal cases of District or Village Police Officers under the provisions of the Bombay Code," and the substitution of the following: "of the Heads of Villages or of the District or Village Police Officers in the Presidencies of Madras and Bombay."

The Motion was carried, and the Section as amended then passed.

MR. HARINGTON moved the introduction of the following new Section after Section 287 :—

"This Act shall not take effect in any part of the territories not subject to the general Regulations of Bengal, Madras, and Bombay, until the same shall be extended thereto by the Governor-General of India in Council, or by the local Government to which such territory is subordinate and notified in the Gazette."

Agreed to.

MR. HARINGTON moved the introduction of the following new Section after the above :—

"The following words and expressions in this Act shall have the meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction (that is to say),

"Words importing the singular number shall include the plural number, and words importing the plural number shall include the singular number.

"Words importing the masculine gender shall include females.

"In any part of the British Territories in India to which this Act may be extended under the provisions of Section , the expression 'Sudder Court' shall be deemed to include the highest Criminal Court of Appeal or revision in such part of the said territories."

Agreed to.

Forms A to D were passed as they stood.

MR. HARINGTON moved the addition of the following form :—

"FORM OF RECOGNIZANCE TO PROSECUTE OR GIVE EVIDENCE.

I , of , do hereby bind myself to appear at in the Court of , at o'clock on the day of next, and then and there to prosecute, (or, as the case may be, "to prosecute and give evidence" or "to give evidence") in the matter of a charge of , against one A. B.: and in case of my making default herein, I bind myself to forfeit to Government the sum of Rupees.

Dated

Agreed to.

The postponed Sections 13, 14, 15, 30, 31, 98, 160, and 164, and the Preamble and Title, were passed as they stood, and the Council resumed its sitting.

CUSTOMS DUTY (BOMBAY).

The Order of the Day being read for a Committee of the whole Council on the Bill "to amend Act I of 1852 (for the consolidation and amendment of the Laws relating to the Customs under the Presidency of Bombay)"—

MR. LEGEYT said, this Bill was the result of the Report of the Select Committee, to whom were referred the two Bills relating to the Import Duty upon Salt, and to the Duty upon Spirits exported from any Port in India and imported to any Bombay Port. The Committee were instructed to consider whether it would not be advisable to consolidate the two Bills before publication, and they had so consolidated them. If the consolidated Bill were to run on in the usual course, a delay of three months after publication would take place. But he had since received a communication from the Government of Bombay, stating that the Bill relating to Salt was urgently required, and wishing it to be passed immediately. He proposed therefore that the Standing Orders be suspended, in order that the Bill might be passed through its subsequent stages.

SIR JAMES OUTRAM seconded the Motion, which was then carried.

MR. LEGEYT moved that the Council resolve itself into a Committee on the above Bill, and that the Committee be instructed to consider the Bill in the amended form in which the Select Committee had recommended it to be passed.

Agreed to.

Sections I to III were passed as they stood.

Section IV was passed after an amendment.

The Schedule, Preamble, and Title were passed as they stood.

The Council having resumed its sitting, the Bill was reported.

LAND CUSTOMS (MADRAS AND BOMBAY).

THE VICE-PRESIDENT moved that the Council resolve itself into a Committee upon the Bill "to alter the rates of Duty on goods imported or exported by land from certain Foreign

Territories into or from the Presidencies of Madras and Bombay," and that the Committee be instructed to consider the Bill in the amended form in which the Select Committee had recommended it to be passed.

Agreed to.

The Bill passed through Committee without amendment, and, the Council having resumed its sitting, was reported.

The Council adjourned at 3 o'Clock.

Saturday, 3rd September 1859.

PRESENT:

The Honorable the Chief Justice, *Vice-President*, in the Chair.

Hon Lieut.-Genl. Sir J. Outram,
Hon. H. B. Harington,
P. W. LeGeyt, Esq.,
H. Forbes, Esq.,
Hon'ble Sir C. R. M. Jackson,
and
A. Sconce, Esq.

MALABAR OUTRAGES.

THE VICE-PRESIDENT read a Message, informing the Legislative Council that the Governor-General had assented to the Bill "for the suppression of Outrages in the District of Malabar in the Presidency of Fort St. George."

ABSENCE OF THE GOVERNOR-GENERAL.

The following Message from the Governor-General in Council was read by the Vice-President:—

MESSAGE No. 185.

The Governor-General in Council forwards to the Legislative Council extract of a Resolution passed on the 2nd instant, relative to the absence of the Governor-General from the Council, and to the necessity for vesting the Governor-General with certain powers during such absence.

By order of the Governor-General in Council,

W. GREY,
Secy. to the Govt. of India.

Fort William,
The 3rd September 1859.

The extract from the Resolution referred to was as follows:—

Extract from the proceedings of the Right Honorable the Governor-General of India in Council in the Home Department, under date the 2nd September 1859.

Resolved.—That it is expedient that the Governor-General should visit the North-Western Provinces of the Presidency of Fort William in Bengal and other parts of India, unaccompanied by any Member of the Council.

That the Honorable Mr. Harington be requested to take charge of, and bring into the Legislative Council, with a view to its being passed into law, a Bill to authorize the Governor-General alone, during his absence, to exercise all the powers which might be exercised by the Governor-General in Council in every case in which the Governor-General may think it expedient to exercise those powers.

(True extract)
W. GREY,
Secy. to the Govt. of India.

MR. HARINGTON moved the suspension of the Standing Orders, to enable him to bring in a Bill "for providing for the exercise of certain powers by the Governor-General during his absence from his Council," and to pass the same at once through its remaining stages, in order that it might receive to-day the assent of His Excellency the Governor-General. This was necessary, as it was the last day on which the Council would sit for some time, and the course now resorted to was adopted with a view to consult the convenience of Honorable Members.

SIR JAMES OUTRAM seconded the Motion, which was carried.

MR. HARINGTON said, in pursuance of the Resolution which had been read from the Chair, and which, in accordance with the requirements of the Act of Parliament, notified the decision of the Council of India that it was expedient that the Governor-General should proceed to visit the North-Western Provinces and other parts of India unaccompanied by any Member of the Supreme Council, he had the honor to lay before the Council a Bill which would enable His Lordship to leave Calcutta, carrying with him the full powers of the Governor General in Council, except, of course, the power of making laws, which he mentioned, as on a former occasion there had been some discussion on this point. It would still, however, be necessary for the Governor-General, wherever he might be, to give his assent to all laws passed by the Council before they could come into operation. This was required by the Act of Parliament already referred to, and could not be dispensed with.

It would be in the recollection of Honorable Members that, when the last Act was passed to admit of His Excellency the Governor-General leaving Calcutta, carrying with him the full powers of the Governor-General in Council, Lucknow and many other parts of the North-Western Provinces were in a state of open rebellion, and that for a time British rule was entirely suspended therein. It was felt desirable, in consequence, with a view to the concentration of Civil authority in the North-Western Provinces, and to unity of action on the part of the Civil Government in aid of Military operations, that the Governor-General should himself proceed and assume charge of the Government of the North-Western Provinces, which would be attended with the further advantage of placing the Head of the Supreme Government in the vicinity of the Head-Quarters of His Excellency the Commander-in-Chief, and at hand to support with the whole weight of the Supreme Government all the Military measures which the Commander-in-Chief might think it expedient to initiate.

In the month of July following the Council was asked to extend the Act passed in the early part of the year for the further term of six months, to enable His Excellency the Governor-General to prolong the period of his absence from the Presidency. In introducing a Bill for this purpose, the present Lieutenant-Governor of Bengal, who was at the time a Member of the Supreme Council, observed that—

"Though the original Act was limited to the short time of six months, he thought he might say that this was done rather on the possibility that events might so fall out that the country might be restored to its usual state of tranquillity in the course of that time than in the expectation that this would be the case. That this had not been the case was manifest. Progress, and great progress had been made; but every Honorable Member was aware that the work had not yet been completed. He did not, of course, speak of the work of re-organization and reconstruction. That most arduous duty which the Government had still before it required deliberation and consultation. He did not speak in consequence of that work not having been yet done; but he spoke of the prompt daily action rendered necessary by the concurrence of daily events in the North-Western Provinces. One point which alone required the continued presence of Supreme Authority in the Provinces, Honorable Members must be well aware of. In the Province of Oude much remained to be done. It must be manifest to every body that, for Military operations to be renewed in Oude, the commencement of the dry season was all that was required. These operations, he hoped, would, in one sense, be very different from those which occurred last year. He hoped that we had seen the last of our great and bloody struggles in the field. But a great Military demonstration was very obviously necessary in Oude—a demonstration which would have probably as much a political as a Military character. For that, and for many other reasons, it was quite as requisite still that the Head of the Supreme Government should be on the spot, vested with the powers of the Governor-General in Council, which Act IV of 1858 had given him temporarily, as it was when that Act was passed; and it was necessary therefore for the Council, unless it wished to go backwards, to extend the operation of the Act."

Since the passing of the Act last mentioned, the Governor-General of India in Council had had the satisfaction to announce to the people of India that "war was at an end, that rebellion had been put down, that the noise of arms was no longer heard where the enemies of the State had persisted in their last struggle; that the presence of large forces in the Field had ceased to be necessary; that order was re-established, and peaceful pursuits had everywhere been resumed." A day of General and Solemn Thanksgiving to Almighty God for His signal mercies and protection during the late events had been observed, and it was thought that it would be a fitting sequel to the whole that His Excellency the Governor-General should now visit those parts of the country which had been the scene of the recent disorders; but which were happily again enjoying the blessings of peace and good Government. His Lordship's tour would be a signal manifestation of the return of peace; a season for the public recognition of services rendered during the late mutinies; and a visible assertion of the authority of the Queen's Government. The tour would embrace the recognition, by His Lordship in person as Her Majesty's Viceroy in India, of many new tenures in Oude; the reception of the influential Native Chiefs from the west of the Jumna, in the Cis-Sutlej States, the Punjaub, and elsewhere; His Lordship's direct intercourse with those who lately lent their aid to uphold the British honor, and his per-

sonal acknowledgment of those services, including the conferment, by His Lordship's hand, of the honors which would be the just reward of those services. An inspection by His Lordship of certain important points, such as Lucknow and Delhi, which were now in a transition state, was also considered desirable, as well as a personal conference with the Lieutenant-Governors of the North-Western Provinces and the Punjaub, and the Chief Commissioner of Oude, in respect to the future Government of those vast and important territories. These were briefly the reasons which had induced His Lordship to consider it advisable that he should visit the Upper Provinces and other parts of India during the approaching cold season. The measure was entirely concurred in by the other Members of His Lordship's Government, and it now only remained for him (Mr. Harington) to ask the Council to pass this Bill, to admit of that measure being carried into effect. It was perhaps proper that he should add that the Bill was word for word the same as that passed in the early part of last year, except that it was proposed that it should continue in force for seven instead of six months, and the words "his Council" were substituted for "any Member of the Council of India" in the Title, Preamble, and first Section of the Bill. This was necessary in reference to the recent change in the Government of India. His Lordship did not propose to leave Calcutta before the first or second week of October, but, as he had said, it was necessary to pass the Bill at once, as it was proposed, at the close of to-day's proceedings, to adjourn the Council for some weeks.

The Bill was read a first time.

MR. HARINGTON moved that the Bill be read a second time.

The Motion was carried, and the Bill read a second time.

MR. HARINGTON moved that the Council resolve itself into a Committee on the Bill.

Agreed to.

The Bill passed through Committee without amendment, and the Council having resumed its sitting, was reported.

MR. HARINGTON moved that the Bill be read a third time and passed.

The Motion was carried, and the Bill read a third time.

MR. HARINGTON moved that Sir James Outram be requested to take the Bill to the Governor-General for his assent.

Agreed to.

LICENSING OF TRADES AND PROFESSIONS.

THE CLERK presented to the Council a Petition from certain Members of the Central Committee of the Indigo Planters' Association against the Bill "for the licensing of trades and professions."

SIR CHARLES JACKSON moved that the above Petition be referred to the Select Committee on the Bill.

THE VICE-PRESIDENT said, he was not sure, with reference to the prayer of the Petition, that it could be referred to the Select Committee. The prayer was "not to proceed any farther with the said Bill, but to demand from its author, in substitution for it, if necessary, a project of taxation which shall press equally on all incomes, howsoever derived, of a proper taxable amount, and on all classes of persons." It was open to the Honorable Mover of the Bill to object to the Petition, with that prayer as it now stood, being received.

MR. HARINGTON said, personally he had not the slightest objection to the Petition being received, printed, and referred to the Select Committee on the Bill, if the forms of the Council, in reference to what had fallen from the Chair, should allow the Petition to be so treated.

The Motion was then put and carried.

ADEN.

THE CLERK reported to the Council that he had received from the Home Department a copy of a communication from the Bombay Government, on the necessity of making adequate legal provision for the administration of justice at Aden.

MR. LEGEYT moved that the above communication be printed.

Agreed to.

MADRAS POLICE.

MR. FORBES presented the Report of the Select Committee on the Bill "for the better regulation of the Police within the Territories subject to the Presidency of Fort St. George."

CUSTOMS DUTIES (BOMBAY).

On the Order of the Day being read for the third reading of the Bill "to amend Act I of 1852 (for the consolidation and amendment of the Laws relating to the Customs under the Presidency of Bombay)—"

THE VICE-PRESIDENT moved that the Bill be re-committed to a Committee of the whole Council, for the purpose of considering proposed amendments therein.

Agreed to.

The Bill was passed after amendments in Sections III and IV; and the Council having resumed its sitting, the Bill was reported.

MR. LEGEYT moved that the Bill be read a third time and passed.

The Motion was carried, and the Bill read a third time.

LAND CUSTOMS (MADRAS AND BOMBAY).

THE VICE-PRESIDENT moved that the Bill "to alter the rates of Duty on goods imported or exported by land from certain Foreign Territories into or from the Presidencies of Madras and Bombay" be read a third time and passed.

The Motion was carried, and the Bill read a third time.

THE VICE-PRESIDENT moved that Sir James Outram be requested to take the Bill to the Governor-General for his assent.

Agreed to.

CUSTOMS DUTIES (BOMBAY).

MR. LEGEYT moved that Sir James Outram be requested to take the Bill "to amend Act I of 1852 (for the consolidation and amendment of the Laws relating to the Customs under the Presidency of Bombay)" to the Governor General for his assent.

Agreed to.

MADRAS POLICE.

MR. FORBES said, the Report of the Select Committee on the Bill "for the better regulation of the Police within the Territories subject to the Presidency of Fort St. George" had already been printed, and was in the hands of every Honorable Member; and before he proceeded to move for a suspension of the Standing Orders, he would request Honorable Members to correct a mis-print in that Report. In the third line of paragraph 10, instead of "we were *all* at first unanimous," it should have been "we were *not* at first unanimous."

He was aware that the Council were at all times unwilling to give their assent to Motions for the suspension of the Standing Orders, and, he thought, very properly so; but still there were occasions when it was very necessary that they should give their assent, and the present, in his opinion, was one of them. He was not about to propose to the Council to pass a Bill rapidly through all its stages. The Madras Police Bill had been published for nearly six months, and during the whole of that time not a single communication had reached the Council, except from the Government of Madras, at whose instance the Bill had been introduced, and that Government were now very anxious that the Bill should speedily become law. The head of that Government had it in contemplation to make certain reductions in the Army, which could not be effected until what it was hoped would be an efficient Police had been established by this Bill. As it was generally understood that this was the last time that the Council would sit for some few weeks, he hoped that what he had stated would be considered a sufficient reason to justify the Council in allowing the suspension of the Standing Orders, in order that the Bill might pass through a Committee, and be read a third time that day. The Council now unfortunately consisted of only seven Members, but five of them had been Members of the Select Committee, and had concurred in the Report which he had just presented.

The only other Members were the Honorable and learned Vice-President and the Honorable and learned Judge

opposite (Sir Charles Jackson), but he did not anticipate the slightest opposition from them, as the Bill was not introduced for the purpose of extending or enlarging the ordinary Mofussil law of India, but for the purpose of introducing into India the principles of English law. On these grounds he hoped to receive the support of the Council in now moving that the Standing Orders be suspended, in order that this Bill might be passed through its subsequent stages.

MR. HARINGTON seconded the Motion, which was then carried.

CRIMINAL PROCEDURE.

On the Order of the Day being read for the adjourned Committee of the whole Council on the Bill "for simplifying the Procedure of the Courts of Criminal Judicature not established by Royal Charter," the Council resolved itself into a Committee for the further consideration of the Bill.

THE CHAIRMAN moved the introduction of the following new Section after Section 20 :—

"No person shall be empowered by Government to hold a preliminary enquiry into cases triable by any of the Supreme Courts of Judicature, or to arrest, hold to bail, or commit any European British subject, unless the person so authorized is a Covenanted Servant of Government, or a European British subject."

MR. HARINGTON said, if they adopted the amendment of the Honorable and learned Chairman, he thought that they would run some risk of violating the Act of Parliament which declared that any Officer of Peace might apprehend a British subject in the Mofussil. This Act did not require that the Officer should be a Covenanted Servant of Government, or a European British subject; and a Deputy Magistrate, though a Native, might, he presumed, exercise the power, there being no doubt that he was an Officer of Peace or Police within the meaning of the Act.

THE CHAIRMAN remarked that the amendment which he had moved proposed merely to empower the Government to do certain things, and it would in no way interfere with the Act of Parliament to which the Honorable Member for the North-Western Provinces had referred.

MR. HARINGTON said, he did not wish to press the point. He proceeded to observe that, in considering the question before the Committee, which was one of very great importance, it would, he thought, be well to go back a little and see what had been proposed in the first instance, and what had afterwards been done. The Code, as originally framed by Her Majesty's Commissioners, was intended to apply to all classes alike, Europeans as well as Natives. Little, if any, distinction was made between the two classes, and to show clearly what was the intention, a Section was introduced, which declared that no person whatever should, by reason of place of birth, or by reason of descent, be excepted from the rules of Criminal Procedure. This was the character of the Code as it was received from England.

In moving the first reading of the Bill, the Honorable and learned Chairman made the following remarks on the part under consideration. He said—

"There was an Article in the Code which involved a question of considerable importance, and would, no doubt, give rise to much conflict of opinion, and become the subject of future discussion. He alluded to Article 8 of Chapter I, which provided as follows :—

'No person whatever shall, by reason of place of birth, or by reason of discent, be in any criminal proceeding whatever excepted from the jurisdiction of any of the Criminal Courts.'

"This Article would invest the Courts of the country with jurisdiction over European British subjects. To him it appeared to be correct in principle, for he could not understand upon what ground it could be contended that any one class of persons should be exempt from the jurisdiction of those Courts. No Frenchman or German or Armenian or East Indian was exempt from their jurisdiction. European British subjects alone enjoyed that privilege; and the Council was aware that there were many cases in which, on account of the extreme inconvenience, expense, and delay which must necessarily be caused by committing defendants for trial to the Supreme Courts for offences committed in distant parts of the country, offenders were frequently allowed to go unpunished. The inconvenience was not confined to prosecutors. It extended also to the witnesses, who were, frequently, in no way interested in the proceedings.

"The Article to which he referred would bring an offender, whatever his place of birth, or whatever his descent, under the jurisdiction

of the Court within the local limits of which his offence might be committed."

There could be no doubt that the Article on which these remarks were made by the Honorable and learned Chairman gave jurisdiction to all Courts, whosoever presided in them, over European British subjects equally with Natives; and he certainly understood the Honorable and learned Chairman in those remarks strongly to have advocated the principle on which the Article was based, namely that it should be of general application, whereas now they were called upon by the Honorable and learned Chairman to declare not only that none but a Covenanted Servant or a European British subject should have power to commit a European British subject for trial, but that no one else should have power even to arrest him. He need not say that this was a most important alteration. How had the Select Committee on the Code, of which he (Mr. Harington) was a Member, proposed to deal with this question? A reference to the Section, as amended by them, would show that they had no desire to extend the jurisdiction of the Mofussil Courts as regarded European British subjects. They were of opinion that, whatever jurisdiction those Courts already possessed over European British subjects, should be continued to them, but that it should not be enlarged; and in order to remove any doubt that might arise, and to prevent the possibility of a mistake, they proposed to add to Section 3 a proviso to the effect that nothing in that Section should be held to authorize the trial of any person who, in respect of the offence with which he was charged, was not subject to the jurisdiction of the Criminal Courts established by Act of , referring to the proposed Bill for the constitution of the Criminal Courts. So that under the Section, as amended by the Select Committee, no European British subject could be committed by a Native Magistrate, whatever his powers might be. In case, however, of a murder or any other heinous offence being committed by a European British subject, a Deputy Magistrate in charge of a division, although not a Covenanted Servant, or a European British subject, would still have power to arrest the offender and to hold the preliminary investigation. To this it appeared to him (Mr. Harington) no reasonable objection could be made. He must repeat that the object of the Section, as amended by the Select Committee, was not to extend in any way the existing jurisdiction of the Mofussil Criminal Courts over European British subjects, but to maintain it as it now existed, leaving for future consideration the large question as to whether Europeans should or should not be amenable to the jurisdiction of those Courts in the same manner as other classes. When the Bill came before a Committee of the whole Council, the Honorable and learned Chairman himself introduced the words which brought European British subjects within the reach of Section 20. As that Section was originally framed, it carefully debarred the local Courts from committing for trial any party who was not amenable to the local Court of Sessions. To show that such was the case, he would, with the permission of the Council, read the Section. It said—

"It shall be competent to the Government to empower any subordinate Criminal Court to hold the preliminary enquiry into cases triable by the Court of Session, and to commit or hold to bail parties to take their trial before such Courts, and to exercise all the powers necessary for such purposes."

Under the law, as it now stood, only Magistrates and Joint Magistrates, or persons exercising the full powers of Magistrate, had the power of commitment to the Sessions. The Select Committee proposed to give the Government authority to invest any Subordinate Criminal Court with this power; but they would have limited its exercise to those cases which were triable by the Sessions Court, in which, by no possibility, could a European British subject be concerned, for this simple reason, that the Courts of Sessions had no jurisdiction over that class of persons, and when a commitment in their case was rendered necessary by the character of the offence charged, it must be made to the Supreme Court of Judicature. It was the Honorable and learned

Chairman, and not he (Mr. Harington), who, contrary to the intention of the Select Committee, had introduced the words out of which the present discussion had arisen, and, so far as those words were concerned, he (Mr. Harington) had no objection whatever to their omission. But what he was afraid of was that, if they passed the Section as proposed by the Honorable and learned Chairman, a difficulty might arise in places where there might be no Officer qualified to act as a Justice of the Peace, nor a Magistrate, nor a European British Subject. He did not think it advisable, nor had he any wish that the Courts in the Mofussil, when presided over by natives, should exercise jurisdiction in criminal cases over European British subjects. He would leave them to be tried by European officers only. At the same time he could not shut his eyes to the fact that, if the Honorable and learned Chairman's amendment were carried, it might often happen that a European, who had committed a serious offence, such for instance as murder, might escape because there was no Officer on the spot empowered to arrest him, or to make the preliminary investigation with a view to obtain proofs of his guilt. This he thought would be a very serious evil, and that it would cast a great reflection upon the administration of criminal justice in the interior of the country. Under Regulation XV. 1806 of the Bengal Code, a Zillah or City Magistrate, when he was a Justice of the Peace, might apprehend and commit European British subjects for trial before the Supreme Court, but when he was not a Justice of the Peace, he was required to send the accused to Her Majesty's Justices of the Peace at Calcutta, with a request that the necessary measures might be taken for bringing the accused to trial before the Supreme Court. The Bombay law was somewhat larger. That law spoke of the Magistrate generally, not of a Zillah or City Magistrate; and he believed he was right in stating that in Bombay many Natives held the appointment of Magistrate, while on this side of India Natives could be invested with the full powers of Magistrate. He thought that a reference to Act VII of 1853 would afford them some assistance in determining the powers of Native Magistrates or of other Natives exercising the powers of Magistrate in respect to European British subjects. That Act was passed to extend the jurisdiction of Magistrates under the 52 Geo. III., c. 155 s. 105 in cases of assaults, forcible entries, and other injuries accompanied with force not being felonies, and under its provisions a Magistrate might try, apprehend, and punish European British subjects committing any of the offences just mentioned; but, in order to show that the powers given by the Act were not intended to be vested in Covenanted Servants of the Government or European British subjects alone, the concluding Section distinctly said—

"The powers in such cases given to the Magistrate of the zillah or the district may be lawfully exercised by any Joint Magistrate or other person lawfully exercising the powers of a Magistrate in the case of any such offence as aforesaid, which may hereafter be committed within the district over which his authority extends."

Here the power of apprehending and punishing European British subjects in certain cases was expressly given, not to Magistrates and Joint Magistrates only, but to any "other person lawfully exercising the powers of a Magistrate." The question then arose who were the persons other than Magistrates or Joint Magistrate who could lawfully exercise the powers of Magistrate. To this question Act XV of 1843 furnished a ready answer in so far as Natives were concerned. That Act gave the Government the power to appoint Native Deputy Magistrates, and to invest them with the full powers of a Magistrate, so that it was clear that Native Magistrates in cases of the nature of those just described had power not only to apprehend but to punish Europeans. Now, however, they were asked to prevent the Government from authorizing any but Covenanted Servants and European British subjects to apprehend a European British subject and that was his (Mr. Harington's) objection to the proposed amendment. He would repeat that he had not the slightest wish to make European British subjects amenable in Criminal cases to Courts presided over by Native Judges in the least degree more than they were amenable to those Courts by

the existing law, and if the Honorable and learned Chairman would so far alter the wording of the Section as to allow a Native Magistrate or Deputy Magistrate, in the absence of a European Magistrate or Justice of the Peace, to apprehend a European British subject charged with the commission of any crime, and after completing the preliminary investigation, to send him to the nearest Justice of the Peace or Magistrate, being a Covenanted Officer of Government, his objections would be entirely removed.

MR. SCONCE said, he was not yet thoroughly instructed as to the whole scope or possible result of the Section proposed. One of the effects of the law of 1806 was to make an invidious distinction between two classes of subjects. He referred to the Section of that law by which Magistrates, not being Justices of the Peace, had to deal with offences committed by British subjects. That Section said that—

"Whenever a European British subject shall be charged before a Zillah or City Magistrate who has not taken the oaths of qualification as a Justice of the Peace with a criminal offence which, according to the law of England, may not be bailable, and the Magistrate, after making the necessary enquiry on the subject, shall be of opinion that there are grounds for bringing the person accused to trial before the Supreme Court of Judicature, the Magistrate shall send the person accused under safe custody to His Majesty's Justices of the Peace at the Police Office in Calcutta, accompanied by the witnesses against the prisoner, with a letter, stating the nature of the case, and requesting that the Justices at Calcutta will take the necessary measures for bringing the person accused to trial before the Supreme Court of Judicature."

Now that feature of the law he was not desirous to continue: it seemed to him not to be by any means desirable that a European British subject should be arrested by a Magistrate incompetent to commit him for trial, and required to forward the person arrested to a Calcutta Magistrate, who, after all, might or might not think fit to make the commitment. Supposing, however, a Magistrate was under the control of the Justice of the Peace of the same district, some change of the old law, which was certainly necessary, might readily be adopted. A more important question was, whether, under any circumstances, a Magistrate who was not a Covenanted Servant of Government, or a European British subject, should exercise Magisterial powers in cases of offences committed by British subjects. On one point he had great doubt, and, as he had said before, was perfectly uninstructed; and he should be glad to have the opinion of the learned Judge on his right (Sir Charles Jackson) and of the learned Chairman as to how far the proceedings in the creation of Magisterial powers should be sufficient authority for the arrest and commitment of a European British subject, without the issue of a Commission of the Peace. If by an enactment of this Council they were competent to supersede the necessity of Commissioners of the Peace, it would be sufficient for them to confer Magisterial powers which would give jurisdiction and cognizance over all persons. It seemed to him that that would be the effect of the Bill, as it now stood, and was the effect of the Section now proposed, and that a person being a Mofussil Magistrate, though not a Covenanted Officer, might exercise the functions hitherto exercisable alone by a Justice of the Peace.

Then, next to that question, followed another still larger question. It mattered not whether the name of Justice of the Peace was retained or not, if the same functions were still to be invested in Mofussil Officers. But a material question to determine was, whether, in defining those functions, they should wholly except persons who were not European British Subjects or Covenanted Servants from the exercise of the functions of arresting and committing for trial a European British subject. He felt greatly indebted to the Honorable Member opposite (Mr. Harington) for his explanation as to the effect of the present Code, as it now stood, upon that much agitated question, namely the trial of British subjects by natives. He believed that question to have been wholly reserved in their recent discussions upon this Code, and that no Member of this Council had been implicated in any way by committing himself to an opinion in the matter. But he felt that it was very different now that a kindred question had arisen,

not so much as to the form in which jurisdiction over British subjects was to be exercised, but that certain classes of Her Majesty's subjects should not be competent to exercise the functions corresponding with those of a Justice of the Peace. It was no new principle that residents of India, not being British subjects, should exercise the powers of Justice of the Peace. In the Statute 2 and 3 William IV. c. 117, it was provided that—

"Whereas it is expedient that other persons, besides the Covenanted Servants of the United Company of Merchants of England trading to the East Indies, or other British inhabitants of the East Indies, should be capable of being appointed to the office of Justice of the Peace within and for the Towns of Calcutta, Madras, and Bombay," &c.

So that under that Act all natives of this country were competent to be appointed by Government to act and officiate as Justices of the Peace in the Towns of Calcutta, Madras, and Bombay. He was speaking now only of the fitness of the natives of this country to exercise the functions of Justices of the Peace. Therefore the point could not be evaded whether, seeing that so far back as 1832 the Imperial Parliament had declared that native gentlemen were capable of being appointed Justices of the Peace, twenty-seven years later this Council should depart from that principle, and declare that native gentlemen, equally well educated, should not be competent to exercise those functions. He need hardly allude to Section 87 of the renewed Charter Act of the following year, where it was declared that—

"No native of the said territories, nor any natural-born subject of His Majesty resident therein, shall, by reason only of his religion, place of birth, descent, color, or any of them, be disabled from holding any place, office, or employment under the said Company."

Whether they looked to one Act or the other, the main point was that no born natives of this country, and no person not being a Covenanted Servant, or a European British subject, was qualified to exercise any functions which could be vested in a Justice of the Peace. He could not conceive that, when once the principle was admitted, the principle of appointing native Justices of the Peace, it could now be departed from. It would be a matter of regret that now that the world was so many years older, now that civilization had so much advanced, and now that liberal sentiments had been so largely extended, they should hold that Her Majesty's native subjects were altogether incompetent to entertain charges against European British subjects. He did not think that the Honorable Member (Mr. Harington) had concluded with a Motion. He (Mr. Sconce) therefore felt disposed to move an amendment in the proposed Clause. He should propose to read the Clause thus:—

"No person exercising the lawful powers of a Magistrate shall hold a preliminary enquiry into cases triable by any of the Supreme Courts of Judicature, or shall arrest, hold to bail, or commit any European British Subject, unless the person so authourized be a Covenanted Servant of Government, or a European British Subject, or be specially empowered by the local Government to act on that behalf."

The difference would be that not every inexperienced Magistrate, and not the large number of Deputy Magistrates now appointed to Mofussil Districts, would be competent to hear charges against British subjects, but, looking to the character and competency of the Native Magistracy, the Government should not be declared disqualified from appointing any Native Magistrate from entertaining such charges. With these remarks he begged to move, as an amendment, that the words above read by him be substituted for those proposed by the Honorable and learned Chairman.

ADJOURNMENT.

SIR JAMES OUTRAM moved that the Council adjourn for ten minutes.

Agreed to.

The Council afterwards met pursuant to adjournment.

MESSAGES FROM THE GOVERNOR-GENERAL.

SIR JAMES OUTRAM returned to the Council Chamber with the Bill "for providing for the exercise of certain powers by the Governor-General during his absence from his Council,"

the Bill "to amend Act I of 1852 (for the consolidation and amendment of the Laws relating to the Customs under the Presidency of Bombay)," and the Bill "to alter the rates of Duty on goods imported or exported by land from certain Foreign Territories into or from the Presidencies of Madras and Bombay respectively," and delivered them to the Vice-President, who thereupon announced that the Governor-General had signified his assent to the same.

CRIMINAL PROCEDURE.

The adjourned debate on the Motion for the introduction of a new Section after Section 20 of the Bill "for simplifying the Procedure of the Courts of Criminal Judicature not established by Royal Charter" was then resumed.

THE CHAIRMAN said, as he understood the effect of the amendment, any person exercising the powers of a Magistrate might be authorized by the local Government to hold a preliminary enquiry into cases triable by a Supreme Court, or to arrest, hold to bail, or commit European British subjects; whereas, as the Section now stood, it was proposed that no person should be empowered by Government to do so, unless he was a Covenanted servant of Government, or a European British subject. The Honorable Member (Mr. Harington) had referred to what he (the Chairman) had stated when this Bill was introduced by him. But he begged to remind the Honorable Member that, when the Bill was brought in, he (the Chairman) did not pledge himself to the whole of its provisions. He had expressly stated that he introduced the Bill as it had been framed by Her Majesty's Commissioners, with the omission of certain Clauses relating to the amalgamation of the Supreme and Sudder Courts, and to the exemption of proceedings in Criminal Courts from Stamp Duties; and he had said that, although he did not coincide with all the recommendations made by Her Majesty's Commissioners, he thought that it would be better to let the Code go forth to the public in the form in which it had been prepared by the Commissioners, in order that it might elicit the opinions and suggestions of all persons competent to advise upon the subject; and that, consequently, he had made no substantial alterations in it. Now the Honorable Member did not act fairly by him (the Chairman) in trying to hold him to the opinion that British subjects should be amenable to the jurisdiction of our Native Criminal Courts. What he had stated then he would repeat now, namely that European British subjects should be subject to the jurisdiction of the Courts of the country; but the question was, how were these Courts to be constituted. If they were properly constituted and were to be assisted by a Jury, he would have no objection. But it was quite a different thing for Englishmen to be tried by a Native Judge with the assistance of a Mahomedan Law Officer, either with or without a Jury. With reference to the observations of Sir Arthur Buller on the occasion of the second reading of the Bill, he (the Chairman) had remarked that—

> "He felt it right, in order to prevent any misapprehension, and not in justification of himself, to remind the Council that, on moving the first reading of the Bill, he had stated that he did not pledge himself to all the provisions which it contained, but that he had inserted the Clauses as they had been framed by Her Majesty's Commissioners, in order that the whole scheme might be fully and fairly before the Council and the Public, and that their opinions regarding it might be elicited. He certainly felt the full force of all that the Honorable and learned Member had said with respect to the Clause which exempted particular classes of public servants from the jurisdiction which the Bill provided for the rest of the community."

This was said in March 1857, before the Mutinies, and he did not think, even if he had pledged himself to the opinion that the Native Criminal Courts should have jurisdiction over Europeans, that any Honorable Member should get up now and hold him to it. If he had expressed such an opinion, supposing even that he had done so, he did not feel himself bound to it after the occurrences of 1857 and 1858. He claimed for himself the right of giving his opinion with reference to facts and circumstances as they might exist at the time. What he had meant to say at that time referred to District Courts. He had expressed no opinion as to how those Courts were to be composed, but he said that it would be

better that Europeans should be tried in those Courts than that they should be brought down from distant places in the heat of the sun to the Supreme Courts for trial. He said so, not only with reference to the persons to be tried, but also with respect to the prosecutors and witnesses. Not long ago a case was sent up from Rangoon, in which the witnesses, after appearing before the Grand Jury, had to return to Rangoon before the prisoner could be put upon his defence before a common Jury. It was with reference to such cases that he (the Chairman) had said that it was better to constitute proper Courts for the trial of Europeans, than to drag an accused person, perhaps an innocent man, down to the Supreme Court. The Honorable Member did not propose to allow a European to be tried by a Native Judge. Then why did he propose to allow a Native Judge to commit him to the Supreme Court for trial, when he might probably be innocent of the offence with which he was charged? If he were an innocent man, witnesses would be obliged to come down to give their evidence for nothing. He remembered a Civil case in which the witnesses had to travel all the way from Agra or Simla. They had to come down in the middle of May, the hottest month in the year, and when they came, they found the case had been withdrawn or postponed, and they were told that they would not be required for about three or four months. They had to pay their own expenses, and while they were so absent their salary was retrenched by the Civil Auditor. Had they been obliged to come down again, they would have been put to the same expense, and the time so occupied would have been thrown away. The matter came before the Government with reference to the refusal of the Civil Auditor to pass their salaries, the Government ordered the Civil Auditor to pass the charge, although, according to the rules of the service, they were not entitled to their salaries. Suppose this had happened in the case of a planter or a private person who could not afford to pay these men, and to employ others to do their work while they were so absent? He (the Chairman) still maintained the opinion that Europeans should be rendered liable to be tried by District Courts, but before the Council made them so liable, let a competent Court be constituted. The Honorable Member did not intend to recommend the trial of Europeans by Natives, but rather twitted him (the Chairman) for introducing words into Section 20 which would subject a European to that trial. He did not deny that the words were put in by him, but how often were words used which did not convey the intention of the person using them? It was not fair to say only that the words had been introduced by him, but the Honorable Member should also have said why he (the Chairman) had introduced them. There were legal difficulties as to the appointment of Justices of the Peace in newly acquired territories, and it was with reference to these difficulties that his amendment had been proposed. Its object was to empower Government to authorize certain persons in such territories to hold the preliminary enquiry into cases triable by a Supreme Court. The persons to be so authorized were those who, in the older Provinces, would, as Justices of the Peace, commit cases for trial in the Supreme Courts, that is to say, Covenanted Servants of Government, or European British subjects. He had since found that the words proposed by him did not properly express his meaning. Surely he was at liberty to amend his mistake.

He thought the Council ought to define what persons should have the power to commit for trial instead of giving to the Government that power, as was now the case by Section 20 and as the amendment of the Honorable Member for Bengal proposed to do. That amendment said—

"No person exercising the lawful powers of a Magistrate shall hold a preliminary enquiry into cases triable by any of the Supreme Courts of Judicature, or to arrest, hold to bail, or commit any European British subject, unless such person be a Covenanted Servant of Government, or a European British subject, or be specially empowered by the local Government to act in that behalf."

He (the Chairman) objected to the introduction of those words. He believed many Governors held different opinions on such subjects. The Gover-

nor of Madras might hold one opinion, the Governor of Bombay another, and the Lieutenant-Governors of Bengal and of the North-Western Provinces and the Punjab others They all might differ in opinion, and he therefore thought that the Council should lay down one rule He would not invest any person who was not a Covenanted Servant of Government, or a European British subject, with the power to commit British subjects for trial by a Supreme Court The Honorable Member said that the Council would be altering the existing law, and he referred to Regulation XV 1806, Sections II and III The words in this Regulation, "Magistrate who has not taken the oaths of qualification as a Justice of the Peace," meant a Magistrate who (being a Covenanted Servant of Government, or a European British subject) might be qualified, but who had not taken the oaths

The Act of Parliament provided that no person should be appointed a Justice of the Peace unless he was a Covenanted Servant of the Government, or a British Inhabitant. The term "British Inhabitant" must be taken to mean a European British Inhabitant, because at that time a Native was not considered a British Inhabitant, or a British subject. To prevent misapprehension, however, he (the Chairman) had thought it proper to use the words "European British subject" in the Section proposed by him.

Then it was said that another Act of Parliament was passed, allowing Natives to be put into Commissions of the Peace for the Presidency Towns But, although it might be so, they were not qualified to act for the Mofussil It was true that this, had been done in Bombay, but the Court of Directors had pointed out that this was contrary to the Act of Parliament

The Honorable Member for Bengal had referred to the Section of the Charter Act, which said that no Native of India was disqualified, as such, from holding any place, office, or employment under Government. The present question related not to disqualification but to qualification A Native was not disqualified from becoming a Member of the Civil Service. He might go to England, pass his examination, and come out as a Civil Servant He was not disqualified from becoming a Civil Servant, or, when a Civil Servant, from being appointed a Justice of the Peace. But he was not qualified to be a Justice of the Peace unless he was a Covenanted Civil Servant. In England Barristers of seven or ten years' standing were allowed to hold certain offices. A Native of India was not disqualified to hold those offices, but he would not be qualified to hold them if he was not a Barrister of seven or ten years, as the Act required.

He should not object to a Clause allowing any Native Magistrate or any qualified person, on receiving evidence of an offence committed by a European, to issue a warrant for his arrest, with a proviso that, immediately on his apprehension, the European should be taken before a Justice of the Peace, that is, a Covenanted Civil Servant, or a European British subject. The European could not be more harassed if so dealt with than he would be if seized by a Police Officer on view of offence Rather than allow Europeans to escape justice, he had no objection to the introduction of such a provision. He did not wish that a European offender should go scot-free. But in such cases whatever was necessary to be done should be laid down by this Council He protested against giving that power to Government, and thought that the law should be distinct upon the subject He should adhere to his original proposition, which was intended as a proviso to Section 20, and should object to the amendment proposed by the Honorable Member for Bengal

MR HARINGTON said, the Honorable and learned Chairman having charged him with not having dealt fairly towards him in trying to hold him to an opinion which he had expressed in March 1857, to the effect that European British subjects should be made amenable to the jurisdiction of the Native Criminal Courts equally with others, he was compelled to trouble the Council with a few remarks by way of reply to this accusation. His wish always had been and he hoped ever would be to act fairly towards all men, and he did not think he was open to the charge of having acted otherwise on the present occa-

sion. It was not his intention, nor had he any desire, to hold the Honorable and learned Chairman to the opinion referred to. So far from thinking that any Honorable Member was bound by an opinion expressed upon a Bill, whether on its introduction or on the second reading, or at any subsequent stage, he had more than once declared that he considered Honorable Members were at full liberty to change their opinions upon any Bill or any part of a Bill whenever they pleased. It was only the other day that, in alluding to an opinion which had been given by the Honorable and learned Chairman, in which he expressed himself to the effect that, whenever the Government were precluded by their engagement from increasing the jumma of an estate, they were equally precluded by the spirit if not by the letter of their engagement from taxing the owners of the estates for which the jumma was paid, by a per-centage on the rents derived therefrom, he (Mr. Harington) had said that the Honorable and learned Chairman was of course at liberty to change that opinion (assuming for the sake of argument that he had so expressed himself) if he thought proper to do so. He wished to take the present opportunity of correcting a mistake which had been made in respect to what had fallen from him on the occasion just referred to. He was reported to have said that the Government considered it impolitic at the present time to tax the Zemindars of Bengal. What he intended to say, and what he believed he did say, was, not that it was considered impolitic to impose any additional tax upon the landholders under the Perpetual Settlement, but that it was thought impolitic to raise the question whether any new taxes could be laid upon that particular class.

He hoped he had said enough to satisfy the Honorable and learned Chairman that it was not his wish to hold him to any opinions which he had expressed in bringing in the present Bill. He willingly acknowledged that the Honorable and learned Chairman had a full right to change those opinions either now or at any future time. But let them turn to the opinion which the Honorable and learned Chairman had formerly given on the subject under discussion, and see exactly what he had said:—

"This Article," he stated, "would invest the Courts of the country with jurisdiction over European British subjects. To him it appeared to be correct in principle, for he could not understand upon what ground it could be contended that any one class of persons should be exempt from the jurisdiction of those Courts."

The Honorable and learned Chairman certainly did not say what Courts he intended, but he went on to observe—

"No Frenchman, or German, or American, or Armenian, or East Indian, was exempt from their jurisdiction. European British subjects alone enjoyed that privilege, and the Council was aware that there were many cases in which, on account of the extreme inconvenience, expense, and delay which must necessarily be caused by committing defendants for trial to the Supreme Courts for offences committed in distant parts of the country, offenders were frequently allowed to go unpunished. The inconvenience was not confined to prosecutors. It extended also to witnesses who were frequently in no way interested in the proceedings. The Article to which he referred would bring an offender, whatever his place of birth or whatever his descent, under the jurisdiction of the Court within the local limits of which his offence might be committed."

Now, they did not require to be told that all the classes referred to by the Honorable and learned Chairman were amenable under the law as it at present stood to the local Criminal Courts of the country, whether presided over by European or Native Judges, and he submitted therefore that he was fully warranted in saying that the Courts which the Honorable and learned Chairman had in view, and to the jurisdiction of which he thought European British subjects equally with Frenchmen, Americans, Armenians, and Natives should be made amenable, were the Courts existing at the present time all over the country. What other Courts could have been intended, seeing the Bill did not propose to establish any new Courts? and were the Bill to become law to-day its provisions would require to be administered by the existing Courts in the same manner that the provisions of the new Code of Civil Procedure were being administered

in Bengal by the Courts which that Code found in existence at the time it was introduced.

The Honorable and learned Chairman charged him (Mr. Harington) with acting unfairly towards him, but he would ask the Honorable and learned Chairman, was it fair to enquire of him (Mr. Harington) whether he would allow a Native Deputy-Magistrate, a Mahomedan he said, to send down a European British subject all the way from Peshawar or Lahore for trial before the Supreme Court. From the first he (Mr. Harington) had objected to the power of committing European British subjects being given to Native Deputy-Magistrates, in proof of which it was only necessary for him again to refer to the Section as framed by the Select Committee, so that he submitted he was not in the remotest degree open to the charge which was implied in the question put to him by the Honorable and learned Chairman. Let the Section as amended by the Select Committee be compared with the Section as amended by the Honorable and learned Chairman. But the learned Chairman stated that the words which he now proposed should be struck out were introduced by mistake. He (Mr. Harington) accepted that explanation. In making these remarks what he (Mr. Harington) really wished was to guard himself against its being said that the Select Committee had proposed to allow a European British subject to be committed for trial before the Supreme Court by a Hindoo or Mahomedan Deputy-Magistrate, the very contrary being the case. The Honorable and learned Chairman referred to what was said by him when he moved the introduction of the words which it was proposed to strike out. He (Mr. Harington) had looked at the report of the debate which took place when the Honorable and learned Chairman made his Motion, but he found no report of what had fallen from the Honorable and learned Chairman on that occasion, and he was obliged to admit that he had forgotten what was said.

Then the Honorable and learned Chairman objected to giving to the Government the power proposed to be conferred upon it by Section 20; but if the objection was worth any thing, it extended to the whole Section, and consistency would require that the entire Section should be struck out. The Section as framed by the Select Committee did not say that all subordinate Courts should be competent to order commitments, but those Courts only which the Government might so empower. The reason for this was that young men when first appointed were not competent to exercise this large power, and it was therefore proposed to be given to those Officers only who, after a sufficient trial, were considered qualified to exercise it.

SIR CHARLES JACKSON said, he did not wish to follow the Honorable Member who had just sat down at any length into that part of his speech which he had so irregularly introduced, and in which he stated that he had been misunderstood on a former occasion, and had not said that the Government considered it impolitic to tax landholders. He must say for himself, that he so understood the Honorable Member, and he would ask all the Honorable Members around him, whether they did not also understand the Honorable Member as putting the exemption of that class on the ground of political expediency.

But he would not dwell further on that subject. With respect to the question now before the Committee, namely, the expediency of giving Native Magistrates power to investigate charges against European British subjects, and to commit them for trial, he had no doubt that, as an abstract proposition, laws should be made applicable to all classes of the people alike; but that proposition must be taken with certain necessary modifications which the peculiar circumstances of each country might render necessary. In this country there was a small dominant and civilized class, and also a large native uncivilized population, and without entering into any argument on this part of the question—an argument which would raise many questions more or less personal as to the status and character of Native Officers—he was prepared to say that, in the present position of the two races, it was inexpedient that a Native Magistrate should have any jurisdiction whatever over British subjects, and if that was his opinion formerly, he certainly had

seen no reason to change it since the Mutinies. But he would rather put the argument on another ground. Whatever might be said of the Mofussil Courts, it must be admitted that they were as good Courts as natives ever had in this country. The Natives are not worse off, but, on the contrary, are much better off as to Courts than they were under the Native Governments. The British subjects, on the other hand, are subject now to Laws and Courts to which they are, more or less, attached, and the real question was, whether European British subjects should be deprived of their own Laws and Courts, and be placed under other Laws and Courts which were deemed by themselves and generally admitted to be of an inferior kind. He never could understand on what principle British subjects could be expected to acquiesce in the justice of such a proposition. No doubt the Laws and Courts of the country should be alike applicable and open to all classes; but the true solution of the difficulty was to raise the native to the position of the British subject, and not to reduce the British subject to the level of the native. Establish good Courts, and, if possible, a good Jury, in the Mofussil, and you would at once destroy all pretence for the exemption of British subjects from their jurisdiction; but until this was done, he should oppose every proposition for placing British subjects under the criminal jurisdiction of the present Mofussil Courts. Before he sat down he would refer to an argument of the Honorable Member on his left (Mr. Sconce), who had referred to the Statute of 2 and 3 Wm. IV as authorizing the appointment of Native Justices of the Peace, and in fact establishing the principle that they were competent to discharge such duties. But their jurisdiction was confined by those Acts to the Presidency Towns, where they had little power, and where the Press and a large European community would operate as a check, and that restriction on the power of the Government to appoint Native Justices of the Peace spoke volumes as to the intention of the Legislature, and showed clearly that they were not then considered qualified to discharge the duties of Justices of the Peace in the Mofussil.

As he understood the present discussion, there appeared to be no difference between the views of the Honorable and learned Chairman and the Honorable Member (Mr. Harington), except as to the point of arrest. Neither of the Honorable Gentlemen wished to subject European British subjects to the jurisdiction of Native Magistrates, and all that the Honorable Member for the North-Western Provinces wanted, was a provision enabling Native Magistrates to arrest. He thought this difference might easily be reconciled by some provision on the subject, but he suggested that it would be better to make such provision in the 3rd Section, rather than in the 20th Section of the Act.

MR. SCONCE'S amendment being put, the Council divided—

Aye 1.	*Noes* 6.
Mr. Sconce.	Sir C. Jackson.
	Mr. Forbes.
	Mr. LeGeyt.
	Mr. Harington.
	Sir James Outram.
	The Chairman.

So the Motion was negatived.

The original question being put, the Council divided—

Ayes 4.	*Noes* 3.
Sir C. Jackson.	Mr. Sconce.
Mr. LeGeyt.	Mr. Forbes.
Sir James Outram.	Mr. Harington.
The Chairman.	

So the Section was carried.

Section 3 provided as follows:—

"No person whatever shall, by reason of place of birth, or by reason of descent, be exempt from the rules of Criminal procedure, provided that nothing in this Section shall be held to authorize the trial before any Criminal Court of any person who, in respect of the offence with which he is charged, is not subject to the jurisdiction of that Court."

THE CHAIRMAN moved the insertion of the words "arrest or commitment for trial" after the word "trial" in the Proviso.

MR. HARINGTON moved by way of amendment that the word "arrest" be omitted from the question.

The amendment being put, the Council divided—

Ayes 5.	*Noes* 2.
Mr. Sconce.	Sir C. Jackson.
Mr. Forbes.	The Chairman.
Mr. LeGeyt.	
Mr. Harington.	
Sir James Outram.	

So the amendment was carried, and the Section as amended then passed.

MR. SCONCE moved the introduction of the following new Section after Section 20*a* :—

"Nothing in the foregoing Section shall be taken to prevent any Officer exercising the lawful powers of Magistrate from hearing a complaint against a European British subject, and issuing a warrant of arrest, or holding to bail any European British subject so charged, with a view to the complaint being investigated before a Magistrate authorized as provided in the last foregoing Section."

The Council divided—

Ayes 5.	*Noes* 2.
Mr. Sconce.	Sir C. Jackson.
Mr. Forbes.	The Chairman.
Mr. LeGeyt.	
Mr. Harington.	
Sir James Outram.	

So the Section was carried.

MR. LEGEYT moved the introduction of the following new Section after the above :—

"When a European or American has been arrested or held to bail under a warrant issued by an Officer not being a Covenanted Servant or a European British subject, such Officer shall forthwith forward him to the Magistrate of the District, or to some other Officer exercising the powers of a Magistrate, who is a Covenanted Servant, or a European British subject."

MR. HARINGTON moved by way of amendment to insert the words "if the person arrested shall claim at the time of his arrest to be a European British subject" after the word "forthwith."

The amendment being put, the Council divided—

Ayes 3.	*Noes* 4.
Mr. Forbes.	Mr. Sconce.
Mr. Harington.	Sir Charles Jackson.
Sir James Outram.	Mr. LeGeyt.
	The Chairman.

So the amendment was negatived, and the Section as originally proposed was carried.

Section 232*a* provided as follows :—

"If the Jury are unanimous in a verdict of guilty, or if a majority of the Jury find a verdict of guilty, and the Judge concur in such finding, the accused shall be convicted. In default of such unanimity, or of such majority with the concurrence of the Judge, the accused shall be acquitted; if the Jury be equally divided in opinion, the Judge shall decide whether the accused shall be convicted or acquitted."

MR. HARINGTON moved that this Section be omitted and the following substituted for it :—

"If the Jury are unanimous in a verdict of guilty, or if a majority of the Jury find a verdict of guilty, and the Court concur in such finding, the accused shall be convicted. If the Jury be equally divided in opinion, the Court shall decide whether the accused shall be convicted or acquitted. In all other cases the accused shall be acquitted."

Agreed to.

MR. LEGEYT moved the introduction of the following new Section after Section 270 :—

"It shall be lawful for the Sudder Court to call for and examine the records of any Court of Session for the purpose of satisfying itself as to the legality of any sentence or order passed, and as to the regularity of the proceedings of such Court. If the Sudder Court shall be of opinion that the sentence or order is contrary to law, the Court shall reverse the same, and pass such judgment and sentence as to the Court shall seem right, or, if it deem necessary, may order a new trial."

Agreed to.

MR. LEGEYT moved the introduction of the following Section after the above :—

"It shall be at all times lawful for the Sudder Court or a Court of Session, and for a Magistrate or other Officer exercising the powers of a Magistrate, to call for and examine the records of any Court subordinate to a Court of Session, for the purpose of satisfying themselves as to the legality of any sentence or order passed, and as to the regularity of the proceedings of such Subordinate Courts. If the Court or Magistrate shall be of opinion that the sentence or order is contrary to law or evidence, the Court or Magistrate shall annul the same and pass such judgment and sentence as shall seem right, provided that in no

case the sentence be more severe than the sentence originally passed."

After some discussion the Motion was negatived.

Section 237 provided as follows :—

"Except in the cases referred to in Section 106, a Court of Session, as a Court of original Criminal Jurisdiction, shall not take cognizance of any offence, but upon a charge preferred by a Magistrate or other Officer specially empowered by this Act or any other law to make commitments to such Court. No Judge of a Court of Session shall precluded from sitting in the trial of any case before such Court by reason of the commitment in such case having been made by himself."

MR. SCONCE moved the omission of the words "No Judge of a Court of Session shall be precluded from sitting in the trial of any case before such Court by reason of the commitment in such case having been made by himself."

The Motion was carried, and the Section as amended then passed.

The postponed Section 271 was passed as it stood.

THE CHAIRMAN went back to Section 270*a*, and proposed amendments therein, which were carried.

The postponed Sections 272 to 275 were passed as they stood.

THE CHAIRMAN moved the introduction of the following Section after Section 275 :—

"An appeal shall lie in all cases of conviction by the Magistrates in the Mofussil, and by the Judges of the Subordinate Criminal Courts, to the Session Judge, and in all cases of conviction by the Session Judges in the exercise of original jurisdiction, to the Sudder Court. Provided that it shall not be competent to the Sudder Court to reverse the verdict of a Jury on the facts of the case in a case tried by Jury before the Session Court; but such verdict shall not prevent the Sudder Court from trying any point of law arising out of the case, or from altering the sentence passed in such case by the Session Court."

The question being put, the Council divided—

Ayes 3.	*Noes* 4.
Mr. Sconce.	Mr. Forbes.
Sir Charles Jackson.	Mr. LeGeyt.
The Chairman.	Mr. Harington.
	Sir James Outram.

So the Section was negatived.

Section 276 provided as follows :—

"Any person convicted by a judgment of any Criminal Court, from which an appeal lies to a higher Court under any law for the time being in force, may present a petition of appeal to the Court of appellate jurisdiction, which may call for the proceedings of the Lower Court, and confirm or alter or reverse the finding and sentence of such Court, but not so as to enhance the punishment beyond what such Court is competent to award; provided that when a Court of Session shall consist of more than one Judge, no judgment of a Magistrate shall be reversed or modified, but by the concurrent opinion of two Judges of the Court of Session."

MR. LEGEYT moved the insertion of the words "subordinate to a Court of Session" after the words "Criminal Court."

The question being put the Council divided—

Ayes 4.	*Noes* 3.
Mr. Forbes.	Mr. Sconce.
Mr LeGeyt	Sir Charles Jackson.
Mr Harington.	The Chairman.
Sir James Outram.	

So the Motion was carried

MR. LEGEYT moved to omit the words

"Beyond what such Court is competent to award; provided that when a Court of Session shall consist of more than one Judge, no judgment of a Magistrate shall be reversed or modified, but by the concurrent opinion of two Judges of the Court of Session,"

and to substitute the word "awarded" for them.

Agreed to.

MR SCONCE moved the addition of the following proviso :—

"Provided that an appeal shall lie from a judgment of the Court of Session to the Sudder Court upon any point of law that may arise upon that judgment."

The Motion was carried, and the Section as amended then passed.

The postponed Sections 277 to 283 were passed as they stood.

Verbal amendments were then made in Section 258, on the Motion of the Chairman.

The postponed Section 286 was passed as it stood.

The further consideration of the Bill was postponed on the Motion of the

Chairman, and the Council resumed its sitting.

STANDING ORDERS.

MR. HARINGTON postponed the Motion (which stood in the Orders of the Day) for a Committee of the whole Council on the Report of the Select Committee on the Message from the Governor-General in Council calling for a report on the practical working of the Standing Rules and Orders of the Legislative Council.

JOINT STOCK BANKING COMPANIES LIMITED.

MR. SCONCE gave notice that he would, at the next Meeting of the Council, move the second reading of the Bill "to enable Joint Stock Banking Companies to be formed on the principle of Limited Liability."

The Council adjourned at 7 o'Clock, on the Motion of Sir James Outram, to Tuesday, the 6th instant, at ¼ to 11 o'Clock.

Tuesday, September 6, 1859.

PRESENT:

The Hon'ble the Chief Justice, *Vice-President*, in the Chair.

Hon. Lieut.-Genl. Sir J. Outram,	H. Forbes, Esq.,
Hon. H B. Harington,	Hon. Sir C. R. M. Jackson,
P. W. LeGeyt, Esq.,	and
	A. Sconce, Esq.

LICENSING OF TRADES AND PROFESSIONS.

THE CLERK presented to the Council a Petition from the Bengal Chamber of Commerce against the Bill "for the Licensing of Trades and Professions."

MR. HARINGTON moved that the Petition be referred to the Select Committee on the Bill.

Agreed to.

JOINT STOCK BANKING COMPANIES LIMITED.

MR. SCONCE moved the second reading of the Bill "to enable Joint Stock Banking Companies to be formed on the principle of Limited Liability."

The Motion was carried, and the Bill read a second time.

CRIMINAL PROCEDURE.

The Order of the Day being read for the adjourned Committee of the whole Council on the Bill "for simplifying the Procedure of the Courts of Criminal Judicature not established by Royal Charter," the Council resolved itself into a Committee for the further consideration of the Bill.

The postponed Section 260 prescribed the form of verdict in trials by Jury.

After some verbal amendments, Mr Harington moved the addition of the following words to the Section:—

"When the Jury are equally divided in opinion, the verdict shall state specially the division of opinion."

The Motion was carried, and the Section as amended then passed.

The postponed Section 261 was passed after verbal amendments.

The postponed Section 262 prescribed the form of finding and sentence.

After some verbal amendments, Mr. Harington moved the introduction of the following Clause into the Section:—

"When the Jury are equally divided in opinion, the finding of the Jury shall state specially the division of opinion, and the finding and sentence of the Court shall then be recorded in the following form or to the same effect:

The Court concurs with the Jurors who have found that Z is guilty of the offence specified in the charge, namely, that he has committed &c. &c., and the Court directs that the said Z be [*sentence*]; or *(as the case may be)*—

The Court concurs with the Jurors, who have found that Z is not guilty of the offence specified in the charge, namely, that Z has committed &c., &c.; and the Court directs that the said Z be discharged."

The Motion was carried, and the Section as amended then passed.

Verbal amendments were made in Sections 267, 270, and 274.

MR. SCONCE proposed an amendment in Section 276. He said, this Section provided for appeals from judg-

ments of Criminal Courts, but did not apply to interlocutory orders. He should move the addition of the following words to the Section :—

"In like manner an appeal may be preferred to any of the Appellate Courts above mentioned from any interlocutory order made in the course of a Criminal trial upon the same grounds as from an order of conviction."

After some conversation the Council divided—

Aye 1.	*Noes* 6.
Mr. Sconce.	Sir C. Jackson.
	Mr. Forbes.
	Mr. LeGeyt.
	Mr. Harington.
	Sir James Outram.
	The Chairman.

So the Motion was negatived.

Section 280 related to appeals from orders in proceedings other than Criminal trials.

MR. SCONCE said, as this Section now stood the decisions of the Sessions Judges would be final, and in no case would an appeal lie from them to the Sudder Court. The cases to be tried would, among others, be cases of forcible dispossession under Act IV of 1840, and cases for the removal of local nuisances and such like, not being Criminal trials. The question was frequently raised whether Magistrates and Sessions Judges had taken cognizance of the cases before them strictly within the terms of the law by which they professed to be guided, and it seemed to him very important that the Sudder Court should have power to amend errors of law. Questions also arose whether the security taken had legally been forfeited, and in Mofussil Courts this gave rise to a great deal of misunderstanding. He therefore proposed the following addition to the Section :—

"An appeal shall also lie to the Sudder Court upon any point of law that may arise from any order made by the Court of Session in such proceedings."

The Motion was carried, and the Section as amended then passed.

Section 287 provided as follows :—

"Nothing in this Act shall be held to alter or affect the jurisdiction or procedure of the Heads of Villages or of the District or Village Police Officers in the Presidencies of Madras and Bombay," &c.

SIR CHARLES JACKSON wished to ask the Honorable Member for Madras the object of the amendment which had been made on his Motion in this Section. What he desired to know was, if the intention of it was to exclude the Police of Madras and Bombay wholly from the operation of the Act. If so, he considered the amendment to be a very improper one. The Act professed to apply to all the Presidencies generally, and he could not understand why two of the Presidencies should be excepted from its operation, so far as the duties and powers of the Mofussil Police were concerned. If this amendment was insisted on, it would be better to strike out of this Code all the provisions regarding Police, than leave the Code in its present state, applicable to the Police of one Presidency only and not to that of the others. He did not know how the amendment had crept into the Bill, but it certainly appeared to him to be a very improper one. He did not rise at present to propose any alteration, but merely to elicit some explanation of the Clause as it now stood.

MR. FORBES said, the Honorable and learned Judge had observed that the amendment had crept into the Section, an expression to which he thought he was hardly open. The provision to which the Honorable and learned Judge had referred had stood in the Bill for the last five months as regards the Presidency of Bombay; and all that he had done was to extend to Madras a provision of the Code which had already been passed for Bombay. The amendment which had been made in the Section on his (Mr. Forbes') Motion on Thursday last was made openly in a Committee of the whole Council. He believed that his Motion was fully understood by other Honorable Members, and he denied that he was obnoxious to the charge made by the learned Judge that he had been in any way instrumental to this amendment having crept in. He stated then what he would now state again. The Bill for the organization of the Madras Police Force was founded on the principle of an entire

separation of the Police from the Revenue and Magisterial Departments, and its constitution as a distinct department under the immediate control of Government. That Bill was intended to give legislative sanction to an entirely new system of Police for that Presidency. The system proposed to be introduced was, so far at least as that Presidency was concerned, an experiment, and the Select Committee on the Bill had recommended that, as the Madras Government had resolved to try it, as the Home Government had approved of its trial, and as the Government of India had sanctioned an expenditure of ten lakhs of Rupees for the purpose, it should not be fettered in its course of action in matters of mere detail. Although there was some difference of opinion as to the principle of the proposed system, he thought that the experiment should have a fair trial He did not think that it would have a fair and full trial if the Government of Madras were not allowed to have its own way as to the manner in which the experiment was to be tried. At the time of moving his amendment in the Section now under consideration, or rather whilst moving for a suspension of the Standing Orders on the Madras Bill, he had said that it was not a law peculiar to India which was proposed to be introduced, but only an extension to India of the principle at work with the Police in Great Britain and Ireland. The Honorable and learned Judge was probably aware that the Police of Madras had become open to charges of oppression and extortion, and the present system had been proposed with a view to its reform. Although there was some difference of opinion as to the probable success of the measure, he believed that all Honorable Members were inclined to give it a fair and full trial.

Even if the Madras District Police were not excepted, it would be absolutely necessary to except the Madras Village Police, which was an institution unknown in Bengal but invaluable in Southern India; and as exact uniformity was therefore impossible, the question of the length to which deviation should be allowed was only one of degree. The Council would probably remember that an exception was made in the Code of Civil Procedure in favor of the Village Moonsiffs of Madras.

MR. LEGEYT said, as the Honorable and learned Judge's question applied to the Bombay Police also, he (Mr. LeGeyt) desired to make a few remarks on the subject. He should be very glad indeed to see the whole of the Police Chapter struck out from this Bill. It was a Bill for simplifying the Procedure of Courts of Criminal Judicature not established by Royal Charter, and he thought that the Procedure of the Police in detecting or preventing crimes and apprehending offenders was no part of the Procedure of Criminal Courts. It would be very confusing to District Police Officers to be obliged to observe the procedure as laid down in this Code, and he was very glad when the Select Committee had agreed to the Section 287, as far as regarded the Presidency to which he belonged. That Presidency had a few plain short directions as to the way in which the duties of the Village and District Police were to be conducted, and which having been now in force for several years had become well understood. An Act (No. XXVIII) was passed in 1852, vesting the Government of Bombay with the superintendence and control of the Police. That law, in some degree, he supposed, over-rode some particular provisions of the Regulation of 1827 as regards the District and Village Police. But he did not think that this Regulation, which contained extremely plain and simple rules, had been superseded, and he was glad to see by this Section that they were to be continued, and that the Executive Police would continue to be governed by the Rules and Regulations which had been in operation during the last thirty years, and had by experience been found to have worked most satisfactorily when properly superintended. He therefore hoped that no alteration would be made in the Bill as regarded Section 287. If any alterations were necessary, he would rather strike out altogether the Chapter regulating the Police procedure. The Village Police had no place at all in the Bill; and as for uniformity, he did not think that any one Code for regulating the Police could be framed to suit every place. What could

answer in one district would not answer in another. It was wholly an Executive matter, and the law of 1827 had wisely left all details to the Executive Government.

He entirely agreed with the Honorable Member for Madras in his remarks on the subject of the Village Police. He appealed to the Honorable and gallant Member opposite (Sir J. Outram), whether, in the part of the Bombay Presidenty with which he was acquainted, we could have got on during the time of the late disturbances, had the Village Policemen been against us, as it was next to certain they would have been, had they been left in the wild state they were in previous to 1847-48.

SIR JAMES OUTRAM said that, as he had been appealed to by the Honorable Member for Bombay, he could only confirm what he had said. In his (Sir James Outram's) opinion, the Bombay Village Police was more efficient, its results had been more satisfactory, than those of the other Presidencies. The Madras Police especially was notoriously most inefficient. It seemed to him monstrously absurd that they should introduce one rule of Procedure for the Police of the whole of India, to suit all kinds of people throughout so vast a country, comprising many different tribes and races. They might just as well attempt to introduce one system throughout Europe. He thought that the local Governments should be allowed to introduce their own systems, and not be bound by a general Code. If the amendment which had been introduced into the concluding Section, and passed at the last Meeting, regarding the Madras and Bombay Police, were now again to be altered, rather than consent to the alteration, he would exclude the whole of the Police provisions of this Bill.

MR. HARINGTON said, he was very glad that this discussion had taken place, as it would enable him to correct a mistake into which he had fallen, as a Member of the Select Committee on the Bill, in allowing certain words to be introduced into the Section under consideration, the effect of which would be to exempt from the rules of Procedure contained in the Bill the Police in the Presidency of Bombay, equally with the Police of the Madras Presidency, which he had certainly never intended; and he took blame to himself for not having more carefully considered what would be the effect of the words in question before giving his assent to their introduction into the Section. In Madras and Bombay the Mofussil Police were invested with certain powers which were not possessed by the Police in Bengal. It was not proposed by the present Bill to give those powers to the Police in Bengal, or to take them away from the Police in Madras and Bombay. But he (Mr. Harington) quite agreed with the Honorable and learned Judge opposite (Sir Charles Jackson), that, in so far as Bombay was concerned, there was no reason why the rules of Procedure contained in the Bill should not be extended to that Presidency equally with Bengal. The case of Madras was different. A Bill, having for its object the introduction of an entirely new system of Police into that Presidency, was now before the Council. It was not proposed that that Bill should be extended to Bombay, and the Police of Bombay would consequently continue to be governed by the rules of Procedure contained in the Bombay Regulations, unless the new Code of Criminal Procedure were made applicable to that Presidency. The Honorable Member for Bombay said, the rules of the Bombay Code were very plain and simple, and that they had worked satisfactorily. He (Mr. Harington) would ask the Committee to refer to those Rules, and see what was their character. Let them take, as an instance, Clause 1, Section 43, Regulation XII. 1827. That Section provided as follows:—

"The District Police Officer shall forward in custody to the Magistrate any person whom he may have reasonable cause to suppose to have been guilty of any penal offence of a nature more serious than those which he is empowered to try, and, according to the principles of Section IX Clause 3rd, he is authorized to apprehend such person without written process; but he shall, after securing the suspected persons, investigate the matter, examine witnesses, and record such statements as the prisoner may voluntarily make, causing to be affixed thereto the signatures of two creditable persons in attestation, and if the result confirm that there is occasion to bring the party to trial, the said proceedings shall be forwarded with him to the Magistrate."

This was one of the Clauses of the Bombay Code which the Honorable Member for Bombay asked the Committee to retain after they had struck out from the new Code of Criminal Procedure provisions substantially the same, which had been introduced into that Code by Her Majesty's Commissioners, but which, after full discussion and consideration, the majority of the Committee had determined should not be retained. He (Mr. Harington) did not think that the Council could allow the Bombay Regulations to remain in force in that Presidency if they passed the new Code of Criminal Procedure in the form in which it had been settled by a Committee of the whole Council, and it was his intention to move the omission of so much of the Section under consideration as, if retained, would exempt the Police at Bombay in their investigation of heinous offences from the rules of Procedure contained in the new Code.

The Honorable Member for Bombay seemed to think that Act XXVIII of 1852 gave the Government of Bombay full power to set aside the existing Regulations of that Presidency in regard to the duties of the Mofussil Police, and to lay down such rules for their guidance as to it might seem fit. He (Mr. Harington) could not concur in that opinion. The Act referred to had nothing to do with the duties of the Mofussil Police. It was an Act simply to relieve the Court of Sudder Fouzdaree Adawlut at Bombay from the superintendence of the Police in that Presidency, and to vest the superintendence in the Governor in Council of Bombay. The Act certainly gave the Governor in Council power to appoint persons to control and superintend the Police, subject to the orders of the said Governor in Council, and to vest in the persons so appointed such power and authority for the purposes mentioned in the Act as might seem proper, but that was all. The Act related entirely to the appointment and the duties of the Superintendents appointed under its provisions, not to the duties of the persons subject to their control and supervision. These were to be continued to be discharged under the Regulations previously in force, one of which he had quoted; and if the Government of Bombay had prescribed different rules under the supposed authority of Act XXVIII of 1852, it appeared to him (Mr. Harington) that it had placed a construction upon the Act which it did not bear.

Not anticipating that there would be any debate to-day upon the Section under consideration, he had proposed to reserve what he had to say on the subject of the Madras Police Bill until they went into Committee upon that Bill. But the present discussion having arisen, it might be convenient for him at once to explain why, when they were about to pass a Code of Criminal Procedure for all India, he was willing that the Madras Presidency should have a separate Code of Procedure, differing in some respects from the Code before the Committee, for the guidance of its own Police and for the regulation of their duties.

If Honorable Members would refer to the debate which took place on the Motion of his Honorable friend the Member for Madras for the second reading of the Bill brought in by him, they would find that he (Mr. Harington) strongly objected to the Bill, and he did not hesitate now to say that he should have been very glad if the Bill, as it was then framed, had been thrown out. Finding, however, that the sense of the Council was against him, he withdrew the Motion which he made, and which contemplated further enquiry before the Bill proceeded to a second reading, and the Motion of his Honorable friend was, consequently, carried without a division. Since then the Bill had undergone a very material change, if not at the instance, certainly, he believed he might say, with the full concurrence of the Government of Madras. In his opinion the changes made had very greatly improved the character of the Bill, and although they had not altogether, they had to a great extent, removed what to his mind was objectionable in it. The principal objection which he entertained to the Bill, as it was originally framed, was that it took away from the Magistrate all powers of control over the Police of his own district, and placed those powers in the hands of an Officer who was not only not to be in any way subordinate to the Magistrate, but who was to be quite independent of him,

thus entirely separating in the person of the Magistrate the Judicial and Police functions, which were at present united in that Officer. The Government of Madras had since caused it to be intimated to the Council, through the Honorable Member for that Presidency, that it was the distinct and unanimous intention of the Madras Government that the Local Superintendents of Police were to be entirely under the orders of the Local Magistrates; that the functions of the Commissioner or, as he should more properly be styled, the Inspector-General, would be confined to the organization of the establishment, and to maintaining it in a state of efficiency by a proper attention to promotion, discipline, and other details of management; and that the primary object of the plan was to place an improved instrument for the prevention and detection of crime at the disposal of the Magistrate; and it was now proposed that the Bill should be altered in accordance with the intention thus expressed. He (Mr. Harington) hailed this important change in the original plan of the Bill with the utmost satisfaction. But it was not on account of this alteration in the Bill that he was about to vote in favor of the Sections to which these remarks particularly applied, though that vote would be given with very much less apprehension as to the consequence, and therefore with very much less reluctance than would have been the case had the Bill retained its original character. As soon as the Council, by allowing the Bill to be read a second time, affirmed the principle of the Bill in so far as the Presidency of Madras was concerned, he (Mr. Harington) determined to offer no further opposition to it. He came to this determination on the ground that a great experiment being about to be tried in the Madras Presidency, it was only fair and proper that the Government of that Presidency, whose duty it would be to carry out the experiment, and who, while they would be entitled to all the credit of success, would also be responsible for any failure that might ensue, should be allowed to make the experiment in that way which in their judgment afforded the best chance or prospect of success. It was for this reason that he intended to support his Honorable friend the Member for Madras in carrying the Bill through its remaining stages substantially in the form in which the Select Committee had recommended that it should be passed. The Bill, if passed, would have his (Mr. Harington's) hearty wishes for its complete success, and he most sincerely hoped that the benefits which the friends of the measure anticipated from its introduction would be realized to the fullest extent. In that case he should have no cause to regret the votes which he was to give that day.

SIR CHARLES JACKSON said, it was all very well to say that different systems required different procedure. But look to Section 23 of the Madras Police Bill, which authorized Police Officers to arrest without warrant. Surely that Section did not depend on any particular system, and the provisions of that Section should be the same as those in the Code of Criminal Procedure. Were the Council to pass two different Bills on the same subject on the same day? They now had before them the Criminal Procedure Bill containing one set of provisions regarding the Police, and on the same day, within a few hours, they would be called upon to pass a Bill containing other and different provisions for regulating the Police of the Madras Presidency. It appeared to him that the Council would stultify themselves if they passed two different laws on the same subject on the same day.

MR. FORBES said, if the learned Judge would refer to the last Clause of the Report of the Select Committee on the Madras Bill, he would find his objection answered by anticipation. The Select Committee observed—

> "It is true that some parts of the Bill are in principle identical with parts of the Code, and have indeed been taken from it; but if the course of procedure upon any points is to be laid down in the Bill, it appears better that the Bill should be complete in itself and embrace all points, the Madras Police being excepted from the operations of the provisions of the Criminal Procedure Code."

He (Mr. Forbes) thought that there was great reason in that, and that the Council would be willing to accept the recommendation of the Select Committee.

MR. LEGEYT said, he had a few words to say in reply to what had fallen from the Honorable Member (Mr. Harington) regarding the Bombay Police. The picture which he had drawn was not quite correct in practice. He had said very truly that the law by which the superintendence of the Police was vested in the Government of Bombay was not Regulation III. 1833, but Act XXVIII of 1852. By the operation of the latter Act the executive and judicial functions of the "District Police Officer" had been dissevered, and the District Police Officer now exercised only the judicial duties laid down in Chapter V of Regulation XII. 1827. The Executive Police duties were executed under the orders of a European District Superintendent of Police appointed by Government under Act XXVIII of 1852, and under this Officer, as his staff, there was in every division of his jurisdiction an Executive Officer who performed those duties of Executive Police which were performed by the District Police Officer previously to 1852.

The number of judicial cases disposed of by the District Magistrates in 1857 exceeded thirty-three thousand, while those disposed of by the higher Magisterial Officers, the Magistrates and Deputy-Magistrates, were under three thousand.

The District Subordinate Magistrates did not commit cases for trial to the Session Courts in Bombay, though he thought they might with advantage be invested with that duty.

There was no inconsistency in his voting against the power of taking confessions and evidence by the Police, seeing that the District Magistrates were not invested with Police Executive powers.

The Honorable Member was correct in saying that, in the earlier part of the Code, they had disposed of the duties of the Executive Police. But these were not the Officers known as District Police Officers. The term "District Police Officer" was a misnomer no doubt. He was one of the subordinate Judicial Officers by whom all cases were prepared for trial. The system was a tolerably good one; and in endeavoring to improve it, he thought the Council would do well to take care that they were not more likely to impair it.

THE CHAIRMAN said, there was considerable difficulty with reference to this Bill and the Madras Police Bill. Many Sections in both Bills prescribed different systems of procedure. For instance, according to Section 52 of the Code, any Police Officer might without warrant arrest an offender on reasonable complaint, or suspicion of having committed an offence for which a Magistrate might issue a warrant. The Code did not perhaps sufficiently define the offences for which a Magistrate must issue summons, and those for which he might issue a warrant. Now Section 22 of the Madras Bill provided that "it shall be the duty of any Police Officer, and he is hereby authorized, to arrest without warrant any person who is charged on credible information, or whom he has reasonable ground to suspect, of having been concerned in any grave or forcible crime or outrage." Then again "any person who is charged with committing an aggravated assault in every case in which he shall have good reason to believe that such assault has been committed, although not in his view, and that by reason of the recent commission of the offence a warrant could not have been issued," and so on. The law of arrest should be the same under the Criminal Procedure Code and in the Madras Presidency.

The Madras Government had expressed a strong opinion in favor of the provisions of the Police Bill. So far as that Bill related to the organization and administration of a Police Force, it was very desirable that its provisions should accord with the wishes of that Government. But in such a matter as a Police Officer's power to arrest without warrant, there should be one rule to regulate the Police throughout India.

He felt the difficulty of passing two inconsistent Acts on the same subject on the same day.

SIR JAMES OUTRAM moved that the further consideration of this Bill be postponed until the Bill "for the better regulation of the Police within the Territories subject to the Presidency of Fort St. George" were settled in Committee of the whole Council.

The Motion was carried, and the Council resumed its sitting.

MADRAS POLICE.

MR. FORBES moved that the Council resolve itself into a Committee on the Bill "for the better regulation of the Police within the Territories subject to the Presidency of Fort St. George," and that the Committee be instructed to consider the Bill in the amended form in which it had been recommended by the Select Committee to be passed.

Agreed to.

Sections I to IV were passed as they stood.

Sections V to VII were passed after verbal amendments.

Sections VIII to XIV were passed as they stood.

Section XV was passed after trifling amendments.

Sections XVI to XX were passed as they stood.

Section XXI was passed after verbal amendments.

Section XXII prescribed in what cases any Police Officer might arrest without warrant.

SIR CHARLES JACKSON suggested the omission of this Section.

MR. FORBES said, the remarks which the Madras Government made were these:—

"The Clauses 51, 52, and 53 of the Criminal Procedure Code may be construed to include the occasions on which it was intended to empower the Police to act without warrant by the Police Bill, but much pernicious uncertainty must result from basing their actions on *their* judgment as to an offence for which a 'warrant may issue' Chapter III of the Code of Procedure leaves this point in a most discretionary state, and it will be scarcely possible to explain the law to the Police, if it be based on a principle so uncertain as this, whether a warrant may or may not issue in a case in which they are called on to act. These provisions of the Criminal Procedure Code were before the Madras Government when the Police Bill was drawn, but it was thought better to enunciate as positively as circumstances admit of the cases in which the Police should act without warrant, rather than adopt the provisions of the Criminal Procedure Code, which left so much to the discretion of the Police."

It would be seen therefore that the Madras Government were averse to give the Police of that Presidency that discretion which was given elsewhere, and instead of leaving it to an ignorant Policeman to distinguish when he was to arrest with and when without a warrant, it was wished to lay down the rule in each particular case. He preferred to press upon the Committee the Clauses as they stood, and he hoped he should succeed in passing them.

The Section was put and carried.

Sections XXIII to LV and the Schedule were passed as they stood.

Form A was passed after a verbal amendment.

The Preamble and Title were passed as they stood.

The Council having resumed its sitting, the Bill was reported.

MR. FORBES moved that the Bill be read a third time and passed.

The Motion was carried, and the Bill read a third time.

MR. FORBES moved that Sir James Outram be requested to take the Bill to the Governor-General for his assent.

Agreed to.

CRIMINAL PROCEDURE.

The adjourned Committee of the whole Council on the Bill "for simplifying the Procedure of the Courts of Criminal Judicature not established by Royal Charter" was then resumed.

MR. HARINGTON moved the omission of the words "Presidencies of Madras and Bombay" in the beginning of Section 287, and the substitution of the following —

"Presidency of Madras; or the jurisdiction of District or Village Police Officers in Criminal cases which they have power to try under the provisions of the Bombay Code, or their procedure in such cases."

MR. LEGEYT said, if he understood the effect of the proposed amendment aright, it would be to place the Village and District Police under the Chapters of this Code, which had just passed through Committee. He could not see why the Police of Madras and Bombay should be dealt with differently. The Council had passed a Bill allowing the Madras Government to manage their Police in the way they thought best. The Government of Bombay, he was authorized to say, were quite content with the Police procedure contained in their Code. The one system had succeeded for years;

the other was an experiment. The Council had heard nothing against the working of the Bombay Police. He had no objection to making the Code of Criminal Procedure applicable to Courts for which it treated. But he had the strongest objection that the Code should go beyond that, and affect or alter the working of the Police of which they had had every proof that it worked well and to the satisfaction of the Government and the people of that Presidency. The directions to Police Officers were contained in Regulation XII. 1827 in clear and unmistakeable terms, and were well understood by the people for whom they were intended. And who were these people? People of the most illiterate kind, and on the receipt of about 3 or 3½ Rupees a month. Could these men be expected to know the circumstances of the offences detailed in Section 70? They would be confused or require to be instructed before they could understand them. He would ask the Council to pause before they introduced this innovation into a country where it was not wanted, and where they had no proof that it was wanted, merely for the sake of uniformity. And what sort of uniformity were they desirous of securing? In Bengal they had heard that the Village Police existed in name only. But in Bombay it existed in reality, and had a principle of vitality in it. The continuance of the Judicial powers of Village and District Police Officers, as proposed by the Honorable Member's amendment, was infinitely less material than the exception of the Executive Police from the difficult and intricate procedure of this Code. If they were going to establish a Village Police, they would have to teach them the provisions of the Penal Code. But whilst learning it, they would exist only in name. Would they destroy by a blow a system which had worked well, and thus undo all the good that had been done during the last ten years? No! he would say leave Section 287 alone. Let the discussion which had taken place to-day go forth with the Bill on its republication, and they would attract attention. If the Government of Bombay should then think that the procedure provided by this Code was preferable to that now in use, they would say so, but he did not anticipate any such concurrence.

MR. HARINGTON. Would the Honorable Member for Bombay allow him to ask him whether the Bombay Government had expressed a wish that the Madras Police Bill should be made applicable to that Presidency?

MR. LEGEYT said, he intended to have stated to the Council that the Bombay Government did not desire the extension of the Madras Bill to that Presidency. They had expressed a wish that there should be no alteration in the present system, with which they were perfectly content.

MR. HARINGTON said, he would then ask, as the Code of Criminal Procedure had been before the public for about three years, if the Bombay Government had asked that the Bombay Police should be excepted from its operation.

MR. LEGEYT replied that the Bombay Government had expressed no wish on the subject. The Code had been before the public so long that nearly every body seemed to have regarded it as a dead letter. People had no idea that it would again be taken up, besides which its provisions were known only to those who might have read them in the Government Gazette, and who, he presumed, were very few.

MR. HARINGTON said, the case then stood thus. The Government of Madras being anxious to introduce a new system of Police into that Presidency had prepared a Bill containing rules for the guidance of the Police to be appointed under the new system in the discharge of their duties, which they had sent up to this Council, and in asking the Council to pass the Bill, they had begged that so much of the new Code of Criminal Procedure as applied to the Police might not be extended to Madras. He (Mr. Harington) thought that there could be no objection to this request being complied with, and he was quite prepared to vote for the exemption asked for by the Madras Government. The Government of Bombay on the other hand, notwithstanding that the new Code of Criminal Procedure had been for so long a time before the public, had expressed no wish that it should not extend

to their Presidency, and they had just been informed by the Honorable Member for Bombay, in reply to a question which he (Mr Harington) had put to the Honorable Member, that the Bombay Government was not willing that the new Madras Police Bill should be extended to Bombay On what ground then could they exempt the Police at Bombay from the operation of a Code which had been prepared by Her Majesty's Commissioners for all India, and maintain in the Presidency of Bombay the Police Regulations which Her Majesty's Commissioners intended should be superseded by the Code framed by them? The Honorable Member for Bombay argued as if the new Code would deprive the Police Officers of the Bombay Presidency of the jurisdiction which they now possessed in petty criminal cases, but that would not be the case The Code would in no way interfere with any judicial functions which the Police at Bombay were competent to exercise under the law as it now stood, and he (Mr Harington) was quite willing that, in the cases which the Bombay Police were authorized to try and decide, they should continue to follow the procedure now observed by them, any thing in the new Code notwithstanding It was in the cases which, after completing the preliminary investigation, they were obliged to refer to a higher authority, that he thought the Police at Bombay should be required to follow the procedure of the new Code equally with the Police in Bengal

SIR JAMES OUTRAM said, he could not understand why they should re-discuss this Section, which was passed at the last Meeting, or why it should be proposed to disturb existing arrangements at Bombay Bombay had not complained of their system being a defective one or requiring reform, then why disturb it? The Honorable Member on his right (Mr Harington) said that, because Bombay had not *asked* for the procedure of the Madras Police Bill being made applicable to them, or to be exempted from the Police procedure of this Code, he assumed that it would be satisfactory to them that the Code should be extended to Bombay He was perfectly convinced from his long experience in Bombay that its Police was in a more efficient state than the Police of Bengal Letters from his friends resident there assured him that the Police was working satisfactorily He saw no reason therefore why the Council should meddle with them so long as they were satisfied The Section having been disposed of and the alteration decided at the last Meeting of the Council, he should vote for the Section as it was then decided.

After some further discussion the Council divided—

Ayes 4	*Noes* 3
Mr Sconce	Mr Forbes
Sir Charles Jackson	Mr LeGeyt
Mr Harington	Sir James Outram
The Chairman	

So the Motion was carried, and the Section as amended then passed

The question being put that the Chairman do report the Bill with amendments, the Council divided—

Ayes 6	*No* 1
Mr Sconce	Mr LeGeyt
Sir Charles Jackson	
Mr Forbes	
Mr Harington	
Sir James Outram	
The Chairman	

So the Motion was carried, and the Council having resumed its sitting, the Bill was reported

STANDING ORDERS

MR HARINGTON moved that the Council resolve itself into a Committee to consider the Report of the Select Committee on the Message from the Governor-General in Council, calling for a Report on the practical working of the Standing Rules and Orders of the Legislative Council

Agreed to

THE CHAIRMAN said that the Committee of the whole Council would probably take the Report of the Select Committee as the basis of the Report to be made by the Council It was not very clear what was the nature of the Report which the Governor-General in Council had called for from this Council [The Chairman here referred to the terms of the Despatch and of the Message from the Governor-General in Council] It appeared to him that the

Select Committee's Report in some respects went more into detail than was necessary, while it omitted sufficiently to explain the object and operation of the several Standing Orders.

The Report should, he thought, state that the rules of this Council were taken from the Standing Orders laid down by the Governor-General in Council, shortly after the passing of the Charter Act of 1833, when the Governor-General in Council had the power of legislation.

There should be some explanation of the several Orders which the Council had adopted For instance, take the Orders which stood under the head of "Meetings of the Council." Possibly it might be considered at home that once a week was not sufficient. He thought that they ought to explain to Her Majesty's Government that the reason why one Ordinary Meeting a week was fixed was that, as two of the Judges of the Supreme Court were Members of the Council, the engagements of those Judges would generally prevent their attendance at Meetings held on any other days than Saturday. It might further be stated that, although the Council met once a week, still a great part of the time of the Members was occupied in the preparation of measures to be brought before the Council for discussion, and, afterwards, in considering the details of measures in Select Committees. When the state of business rendered it necessary, the Council had exercised the power of adjourning the Ordinary Weekly Meeting on Saturday to some early day in the ensuing week, and the Standing Orders empowered the Governor-General or the Governor-General in Council to call an Extraordinary Meeting at any time.

He had not prepared a Report in accordance with his views, but he would propose some amendments in the Report of the Select Committee now under consideration. [He here noticed the amendments which he proposed to move.]

MR. HARINGTON said, he did not rise for the purpose of offering any opposition to the amendments which might be proposed by the Honorable and learned Vice-President; he had no doubt that those amendments would be an improvement on the Report as it now stood. But as he had, at the present time, the honor of a seat in the Executive Council, this Council might look to him for some information both as to the nature of the Report which was required by the Secretary of State, and as to the purpose for which that Report was required. He was sorry, however, to say that it was not in his power to afford the Council any information on either of these points beyond what they already possessed. The Despatch received from the Secretary of State had been communicated to the Council *verbatim*, and this Council therefore possessed all the information on the subject which it was in the power of the Executive Government to furnish.

The Legislative Council having now been in existence for upwards of five years, he (Mr. Harington) was led to suppose that the Secretary of State thought that the time had arrived when a comparison might fairly be drawn between the present system of making laws for India and that which preceded it. The Secretary of State probably looked rather to the Executive Council than to this Council for the information necessary to enable him to institute this comparison. He gathered this as well from the communication which had been received from the Secretary of State, as from the fact that separate Reports had been called for from the Honorable and learned Vice-President and from the Honorable the Lieutenant-Governor of Bengal, both of whom had been Members of the Executive Government under the old and the new systems. The duty of reporting on the working of the Standing Orders of the Council properly devolved upon this Council. The Secretary of State could not require to be told what those Standing Orders were, because doubtless he had a copy of them before him at the time he wrote his Despatch. What he desired to know was, how those orders had worked during the period they had been in operation, with a view probably to consider whether any and what alterations were required in them; and in reporting that upon the whole the Standing Orders had worked satisfactorily and well, which he believed was the case, it appeared to him that the Council

had said all that was necessary or, the fact being as stated, that could be expected from them. He had no reason to suppose that in the present call any blame was intended to be imputed to the Legislative Council. Although he had no authority for saying so, he believed that the only object which the Secretary of State had in view was, as he had already remarked, to institute a comparison between the two systems, in order to determine which was the best suited to the country, and he (Mr. Harington) could only express a hope that the result would be not otherwise than favorable to the present system.

The Report passed through the Committee after several amendments on the Motion of the Chairman, and the Council having resumed its sitting, was reported.

MADRAS POLICE.

THE VICE PRESIDENT announced that the Governor-General had signified his assent to the Bill "for the better regulation of the Police within the Territories subject to the Presidency of Fort St. George."

CRIMINAL PROCEDURE.

MR. HARINGTON moved that the Bill "for simplifying the Procedure of the Courts of Criminal Judicature not established by Royal Charter," as settled in Committee of the whole Council, be published for three months.

Agreed to.

JOINT STOCK BANKING COMPANIES LIMITED.

MR. SCONCE moved that the Bill "to enable Joint Stock Banking Companies to be formed on the principle of Limited Liability" be referred to a Select Committee consisting of Mr. LeGeyt, Mr. Forbes, Sir Charles Jackson, and the Mover.

Agreed to.

NABOB OF THE CARNATIC.

THE VICE-PRESIDENT wished to notice a Report of a decision of the Supreme Court at Madras on an Act lately passed by the Council. He did not know whether the Report was correct or not, but in one part of it the learned Chief Justice was made to say—

> "But manifest as may be the grievances of the applicant, we should perhaps not be justified in granting the postponement prayed for, unless it is likely to procure him redress. This consideration leads me out of our ordinary province, which is merely to expound the law as we find it, and not to remark upon its general character and policy. But called upon as I am under the peculiar circumstances of this case, I am bound to declare my opinion that the legislation complained of is of the grossest *ex post facto* character, and that it violates the first principles of legislation and of justice."

He must say, if the language used by the learned Chief Justice was correctly reported, that such language was in his (the Vice-President's) opinion indecorous from a Judge sitting on the Bench, whatever might be that learned Judge's private opinion. The Chief Justice declared that an Act passed by the Legislative Council, and which had received the assent of the Governor-General, was "of the grossest *ex post facto* character, and that it violates the first principles of legislation and of justice." It was explained in the judgment that the Act had been passed when the East India Company undertook to pay in full certain debts of the Nabob of the Carnatic. A question had been brought before the Supreme Court by a person claiming to be one of the Nabob's creditors in respect of a debt contracted by Prince Azeem Jah. The Court did not actually decide in that case the point now in question, namely, whether debts contracted by the Prince, and justly contracted as between the Prince and the creditor, though unfairly as regards the Nabob, were debts justly and fairly due from the Nabob. In that case the Prince himself gave evidence to the effect that he had contracted the debt on his own private account. In delivering judgment which was in favor of the Government and against the creditor, the Court took an opportunity of expressing an opinion that the words "fairly and justly" in the Act meant fairly and justly as between the Prince and the creditor, and not as between him and the Nabob; and

that debts contracted in the Nabob's name were binding on the Nabob, and consequently on the East India Company who had agreed to pay his debts, and this notwithstanding that it might be shown that the Nabob was not at the time of contracting the debt in want of money, and that he had ample funds in his treasury.

Nothing was said in this Council upon the judgment of the Supreme Court. The Court appeared to suppose that the Council assumed to overrule the decision, but this was not so; there was no decision, but only an *obiter dictum*, an expression of opinion not called for and extra-judicial.

Offence seems to have been taken at the recital in the Act that "doubts had arisen." It was supposed to reflect upon what had actually been decided, but there had been no decision, nothing from which an appeal would have lain. What was the Council to do? If the language used in the Act expressed a meaning different from their intention, were they not justified in setting it right? They said, in effect, "the language may be ambiguous; if this is the correct construction, the words do not convey our real meaning." Was it right to wait until the Court had actually decided, or to set the matter right at once? He would refer to what he had said, to show that there was no intention to interfere with any decision of the learned Judges. He said—

"The question was whether the Court intended, and whether this Council, in passing Act XXX of 1858, intended that the Government should pay all debts whatever which had been contracted by the Regent during the minority of the Nabob, if contracted fairly as between the Regent and the creditors, however unjust it might have been as between the Regent and the Nabob for the former to contract them, and whether they were contracted for the benefit of the Nabob or not. The Court had not, as he understood, actually decided the case against Government; on the contrary, they decided the particular case in favor of Government, upon the ground that the debts had not in fact been contracted on behalf of the Nabob, but expressly on behalf of the Prince Azeem Jah as a private debt of his own.

The Court had come to that decision upon the evidence of Prince Azeem Jah, who had been examined as a witness, and who proved that he had borrowed the money on his own account, and that he alone was liable for it.

But the Court, in determining that case, had expressed their opinion as to the proper construction of the words 'fairly and justly contracted by the Nabob, or on his behalf, during his infancy, by Azeem Jah as Nabob Regent.' The Court held that, if the money was fairly and justly lent by the creditors to the Nabob Regent, and the latter borrowed it in the name of the Nabob, it was a debt 'fairly and justly contracted by the Nabob Regent on behalf of the Nabob' within the meaning of the words to which he had already drawn the attention of the Council, notwithstanding it might have been wholly unnecessary to borrow the money for the use of the Nabob, and notwithstanding it might never have been applied to his use. But it should be remarked that the words 'fairly and justly contracted on behalf of the Nabob' were used only in the Preamble of the Act, and not in the enacting Clause. The enactment was in Section XIV, by which the Government was bound to pay any such debts as were fairly and justly due from the Nabob, or were payable out of his estate. The words in the Preamble might be used to explain the words of the enacting Clause, but they did not themselves amount to an enactment. But even looking at the words of the Preamble alone, it was clear that the words 'fairly and justly' had reference to the conduct of the Nabob Regent, and not to the conduct of the creditors—'fairly and justly contracted by the Nabob or on his behalf, during his minority, by Azeem Jah as Nabob Regent.' Then the justness or fairness of the conduct of the Regent must have reference to the Nabob and not to the creditors, for if it were fair and just as between the Prince and the Nabob to contract the debts, no unfairness towards the creditors could deprive the latter of their rights. If the debts were fairly due from the Nabob, or binding upon his estate, they were to be paid by Government, otherwise they did not fall within Section XIV of the Act. If the Legislature had not expressed their meaning clearly, they should do so now. He contended that the Prince had no authority to borrow money in the name of the Nabob when it was not required for his use, and that he had no power to bind the Nabob to pay money, even though borrowed in his name, if it was not necessary to borrow it for his use, and if it was not applied for the purpose."

Again, with reference to the suspension of the Standing Orders, he said—

"It must be recollected that if in the ordinary course of legislation the passing of the Bill were to be delayed for three months, a large number of claims might be brought to a hearing, and probably be determined in the interim.

He apprehended that it would scarcely be right, if a decision should be passed by the Court, for the Legislature to pass a law upsetting that decision. But if the Court had misunderstood the meaning of the Legislature, the Legislature might well come forward and

The Vice-President

declare what its intention was when it passed the former Bill. It might be that the former Act was ambiguously worded, and that the Court were warranted in the construction which they had put upon it; or it might be that the words did not express the meaning which the Court had put upon them. It was not necessary to determine that question. If the construction which the Court had put upon the language of the Legislature was not in accordance with their meaning, surely it was competent to them to come forward and declare what their meaning was. Then he thought that if the Legislature were to declare their meaning, it was far better that they should do so now than three months hence."

There was no attempt to overrule any decision; there had in fact been no decision, but only an opinion expressed. Seeing that the question must arise, the Council were justified in saying "we never meant this, we never understood that the Court of Directors undertook to pay debts of this nature; therefore, if there is a probability of our intention being mistaken, we will make it clear." This was what the Chief Justice had thought fit to describe as "one of the grossest *ex post facto* character, and violating the first principles of legislation and of justice."

There was also some discussion as to the power to award costs against claimants. The Act therefore empowered the Supreme Court to award costs to either party. He did not wish to remark on the judgment of the Supreme Court without knowing certainly that such was the language which had been used. He would therefore move that His Excellency the Governor-General in Council be requested to obtain through the Madras Government a copy of the judgment, and that it be laid on the table.

SIR JAMES OUTRAM said, he should second that Motion, and if his Honorable colleagues would allow him, he desired for himself and on behalf of them to thank the Honorable and learned Vice-President for the earnest and able manner in which he had taken up the subject. He (Sir James Outram) thought that the Council had a right to demand explanation, and the withdrawal of the most unwarrantable and uncalled-for animadversions passed on this Council, should the Judge really have expressed himself as represented.

The Motion was carried.

THE VICE-PRESIDENT moved that Sir James Outram be requested to take the above Message to the Governor-General in Council.

Agreed to.

STANDING ORDERS.

THE VICE-PRESIDENT moved that Sir James Outram be requested to take the Report on the practical working of the Standing Rules and Orders of the Legislative Council to the Governor-General in Council.

Agreed to

The Council adjourned at ½ past 5 o'Clock, on the Motion of Sir James Outram, to Saturday, the 12th of November next.

This leaf to be cancelled on the issue of Part X

declare what its intention was when it passed the former Bill. It might be that the former Act was ambiguously worded, and that the Court were warranted in the construction which they had put upon it; or it might be that the words did not express the meaning which the Court had put upon them. It was not necessary to determine that question. If the construction which the Court had put upon the language of the Legislature was not in accordance with their meaning, surely it was competent to them to come forward and declare what their meaning was. Then he thought that if the Legislature were to declare their meaning, it was far better that they should do so now than three months hence."

There was no attempt to overrule any decision; there had in fact been no decision, but only an opinion expressed. Seeing that the question must arise, the Council were justified in saying "we never meant this, we never understood that the Court of Directors undertook to pay debts of this nature; therefore, if there is a probability of our intention being mistaken, we will make it clear." This was what the Chief Justice had thought fit to describe as "one of the grossest *ex post facto* character, and violating the first principles of legislation and of justice."

There was also some discussion as to the power to award costs against claimants. The Act therefore empowered the Supreme Court to award costs to either party. He did not wish to remark on the judgment of the Supreme Court without knowing certainly that such was the language which had been used. He would therefore move that His Excellency the Governor-General in Council be requested to obtain through the Madras Government a copy of the judgment, and that it be laid on the table.

SIR JAMES OUTRAM said, he should second that Motion, and if his Honorable colleagues would allow him, he desired for himself and on behalf of them to thank the Honorable and learned Vice-President for the earnest and able manner in which he had taken up the subject. He (Sir James Outram) thought that the Council had a right to demand explanation, and the withdrawal of the most unwarrantable and uncalled-for animadversions passed on this Council, should the Judge really have expressed himself as represented.

The Motion was carried.

THE VICE-PRESIDENT moved that Sir James Outram be requested to take the above Message to the Governor-General in Council.

Agreed to.

STANDING ORDERS.

THE VICE-PRESIDENT moved that Sir James Outram be requested to take the Report on the practical working of the Standing Rules and Orders of the Legislative Council to the Governor-General in Council.

Agreed to.

The Council adjourned at ½ past 5 o'Clock, on the Motion of Sir James Outram, to Saturday, the 12th of November next.

Saturday, November 12, 1859.

PRESENT:

Archibald Sconce, Esquire.

No other Member of the Council was this-day present.

Saturday, November 19, 1859.

PRESENT:

Archibald Sconce, Esquire.

No other Member of the Council was this-day present.

Saturday, November 26, 1859.

PRESENT:

Archibald Sconce, Esquire.

No other Member of the Council was this-day present.

Saturday, December 3, 1859.

PRESENT:

The Hon. Lieut.-Genl. Sir James Outram, Senior Member of the Council of the Governor-General, presiding.

Hon. H. Ricketts, Hon. H. B. Harington, Rt. Hon. J. Wilson, H. Forbes, Esq., Hon. Sir C. R. M. Jackson, and A. Sconce, Esq.

LICENSING OF TRADES AND PROFESSIONS.

THE CLERK presented to the Council the following Petitions against the Bill "for the licensing of Trades and Professions"—

A Petition of certain Inhabitants of Calcutta.

A Petition of Inhabitants of Madras.

A Petition of Native Inhabitants of Ahmedabad in the Bombay Presidency.

MR. HARINGTON moved that the above Petitions be printed.

SIR JAMES OUTRAM then rose and said—

I gladly seize the opportunity this Motion affords me, without infringing the Standing Orders, I believe, to put myself right with the public in a matter having connection with the Bill against which this is a protest, affecting the honor of my colleagues in the Government of India and myself, though I deem that the public has done us grievous wrong in so readily assuming that we could be capable of the dishonor which has been attributed to us by the public Pre-s.

I say *dishonor*, for surely 'twere most dishonorable in us to conspire, as we are accused of having done, to impose burdens on our countrymen and native subjects in India, from which we exempt ourselves.

I speak for myself alone, without concert with, or authority from, His Excellency the Viceroy or my Honorable Colleagues, who possibly may consider it unnecessary, or that it would be undignified, to defend themselves against what they are conscious are utterly unfounded calumnies. But I confess myself to be, as a soldier, more sensitive to attacks on my honor than public men usually are perhaps, and I will not silently submit to have my honor, in my official capacity, called in question, any more than I would suffer my honor to be assailed as a private individual.

High in position as a seat in the Council of India is, and lucrative as is its salary, I must say that I consider the dignity and emoluments of the Office more than counterbalanced by the virulent slander and vindictive misrepresentation to which its incumbent is now so frequently exposed, however undeserved. It was hard enough to be subjected to the unscrupulous assaults of the local Press; but now that some of the most respectable and influential of the organs of public opinion in England so readily adopt and give currency to those misrepresentations, I confess that to me the position is almost unbearable, and that it would afford me more pleasure than regret to be released from it. So much is this my feeling, that I declare that did my present circumstances admit of my doing so, I would at once solicit to be relieved, although I myself have less of slander and misrepresentation to complain of perhaps than others of my colleagues.

Without at present referring to former attacks, especially on the high-minded nobleman at the head of the Government, I shall merely now notice those which have found utterance since our Bill for licensing trades and professions was introduced to the Council at our last sitting, and which I find thus summarized and commented on, as regards the English Press, by the London correspondent of the *Friend of India*, as published in that paper the day before yesterday—

"They (certain of the leading papers) have reprobated, in no measured terms, the exemption of the servants of Government which it was sought to establish. That project has been defeated, but the odium of having proposed it sticks to the Government, and all the water in the river cannot wash out the stain. Public confidence can never again be placed in men who proposed to exempt themselves from taxation, to which they were ready to subject all other classes. Nor has it failed to be noticed, to the damage of the Governor-General unjustly, that both in the original and in the amended proposition his own personal interests have been held sacred. You know that one act of meanness does more to destroy a man's reputation than a dozen acts of despotism, and it is to be hoped that

this anomaly will be fully and satisfactorily cleared up."

I am happy to observe that the writer himself considers the strictures on the Governor-General to be unjust, and I shall soon satisfy the public, I trust, that they are *most* unjust; but I have now to deal with the accusations a brought against the Government, as body, by the public here and at home.

We are accused, in the first place, of having sought to screen the servants of the State (including ourselves, that is, the Governor-General and his colleagues in the Government) from sharing the burdens we purposed imposing on our countrymen and native subjects in India. And then, on failure of effecting that assumed object, we are accused of designing to exempt ourselves from bearing any share of the burdens we purposed imposing on the servants of Government. Now, there is not the shadow of a foundation for either of those accusations, as I am about to show. And I trust that in doing so I may not be deemed by my Honorable Colleagues in the Government amenable to the charge of indiscreetly divulging aught that should be concealed; for I myself can see no objection to its being proclaimed at Charing Cross, that we did at one time contemplate levying a contribution from all servants of the State at the graduated scale of five per cent. on salaries not exceeding five hundred Rupees monthly, ten per cent. on salaries ranging from five hundred to five thousand Rupees, and twenty per cent. on salaries above five thousand Rupees. And though I know it is quite unnecessary for me so to assure you, Honorable Sirs, yet, as the uncharitable public might require such a declaration from me, I do declare, therefore, that no consideration that the heaviest burden would fall on ourselves by that measure influenced us in subsequently substituting the more extended scheme of Mr. Harington's Bill, whereby all classes who could legally be reached would be taxed at the estimated rate of three per cent. on Income. Nor was it ever for one moment contemplated by the Government to exempt either its members, or any servants of the State, from the same rate of taxation on their salaries (though I admit that I myself pleaded exemption for Regimental Officers not on the Staff on what appeared to me just grounds); but we did consider it unadvisable to specify those salaries *in the Bill*, because thereby a precedent would be established as uncalled for as undesirable, admitting the right of this Council to interfere with the action of Government in lowering or raising the salaries of its servants, which the Government has full power to decree without the intervention of any legislative Act. And the taxation of such salaries would have been decreed by Government accordingly simultaneously with the passing of the Bill.

Afterwards, when in deference to the opinion of this Council we waved that objection, and official salaries were brought within the provisions of the Bill, the Government was still debarred from including those salaries which had been fixed by Act of Parliament (that is, those of the Governor-General and Members of the Council of India, and of the Members of the Legislative Council), it having been pronounced by our Law adviser that such salaries cannot legally be interfered with by any Act of this Council. But it never, of course, was intended by any Member of the Government to claim exemption on that plea from equal taxation on his own salary, and it was unanimously resolved by us that each Member should personally direct the amount to be deducted from his monthly abstract, and paid into the treasury, from the date on which the Bill should come into operation. And we did not, and could not doubt, that the Honorable Members of the Legislative Council would do likewise. So impossible did it appear to me that it ever could be conceived that any honorable man—and in high position—would desire to evade his just dues to the State, that I certainly was somewhat astonished when our Honorable and learned Vice-President, and his Honorable and learned Colleague, stood up in this assembly to declare that *they* would act honestly in the matter, as if anticipating that such a charge might be brought against us. So entirely supererogatory did I regard it for any gentleman to volunteer so unnecessary an assurance, that I really thought it self-degrading to do so, as admitting the possibility of its ever being sup-

posed that I could do otherwise than act honestly. I abstained therefore from following the example of those Honorable and learned Gentlemen; and I presume all other Honorable Members were likewise deterred from doing so by similar feelings.

It must be evident to us all now, however, that the Honorable and learned Members were right, and that we—not learned Members—were wrong. They have been extolled for their patriotism and magnanimity, and for their independence in not following our base example: while we are regarded as devoid of those qualities. The Honorable and learned Gentlemen judged human nature—British nature—more shrewdly than we, and this I account for by the fact that they, as Members of the Legal Profession, left home at a mature age, after rubbing shoulders for years with their fellow-men in England since arriving at man's estate; whereas we, having come to India as mere boys, and having had no experience of personal contests with our countrymen in the hard struggles of life, had associated with them only during brief furloughs: and had seen them only in holiday attire—a merely social intercourse wherein the *amenities* had no need to be discarded, neither party having aught to gain from, or lose to, the other. We gave our countrymen credit for the more generous feelings which inspire confidence in the integrity of men whose long services and tried character might well raise them above the reach of suspicion. But we reckoned without our host. We now find that no character, however high, can shield us from the suspicion that we are as regardless of honor as the meanest shoe-black in London streets. It has to me been a lesson that will last till the end of my life. I now feel that high rank in the Army, high honors derived from my Queen and my country, the acknowledgment of Parliament, and forty years' tried service to the State, are no guarantee for my honesty in the [illegible]es of my countrymen. Never hen[illegible]r shall I claim exemption fro[illegible]'s distrust on such flimsy grounds.

But this is not all. Not merely is the Government of India deemed by the public here and at home, or at least by their Press organs, so selfishly mean and tyrannical as to exempt itself from the exactions it heartlessly wrings from its subjects and servants, but we, its members, are assumed, I observe, to be imbued with such overweening self-conceit and blind prejudice, that we are expected by the people of England to throw every obstacle in our power—from sheer jealousy, if not worse influences—in the way of the Right Honorable Gentleman who has come to aid us in our financial difficulties! so devoid of patriotism, so regardless of our duty to the State, and of the interests of the millions entrusted to our rule, and so utterly dishonorable, as wilfully to obstruct any beneficial measures that do not emanate from ourselves! To this I scorn to reply. The Right Honorable Gentleman needs not, I am sure, any assurance from me of the cordial, earnest, and honest support he will always receive from his colleagues in the Government during the prosecution of the arduous task which with such generous self-devotion he has undertaken. We are bound in honor, we are bound by duty, and it is our most earnest desire, to aid our right Honorable Colleague in that undertaking to the utmost of our power and ability, and I am confident that he will as cordially accept our co-operation as it will most cheerfully and heartily be given by us. He knows too well the nature of the duty before him to require me to tell him how ungracious, as well as arduous, a task he will find it to draw taxes from Her Majesty's subjects in India, heretofore almost wholly exempt from direct taxation; but this much I may tell him, as the result of my own experience among them, that I do believe, that were the Angel Gabriel to descend from Heaven to apportion the share each individual should bear of the common burden, not one of them but would protest against his decision.

Great as has been the outcry against the License Bill, I am satisfied of this, that our Right Honorable Colleague will derive benefits from the discussion it has raised, if not from the Bill itself, whether it be adopted or not, either in its integrity or in a modified form; for it has elicited information as to the resources of all classes in India, which otherwise could not easily have been obtained: each class of the people, in

Sir James Ou ram

claiming exemption for itself, having zealously volunteered to show how other classes may be mulcted more readily, if not more justly

SIR JAMES OUTRAM concluded with an expression of thanks to his Honorable Colleagues of the Council for their kind attention and sympathy, throughout his first attempt to defend himself and them from undeserved reproach.

MR. HARINGTON said, he had not intended to take any notice of the misrepresentations which had appeared in some of the English journals relative to the conduct of the Government of which he had the honor of being temporarily a Member, in proposing to exempt official salaries from the operation of the Bill brought in by him for licensing trades and professions, because he felt that there was sufficient on record, both in the printed reports of the proceedings of the Council, and in the columns of the Indian journals, to show that, as had been so well and emphatically declared by the Honorable and gallant President, there was not the smallest ground for the statement which had been put forth that it was at one time contemplated that the salaries of the Members of Government and official salaries generally should be allowed to go scot free, while all other professional incomes were to be taxed He was not insensible to public opinion Mere personal or vulgar abuse he made it a rule always to treat with contempt, but to criticism upon his public acts, even though it should not always be fair and candid, he did not think it right to turn a deaf ear. If the criticism were favorable, the effect upon him was to confirm him in his purpose If the criticism were unfavorable, the use to which he tried to put it was to make it the means of a more careful examination of the particular measure to which it related, with a view to satisfy himself as to whether that measure was right or wrong in itself. This was how he had endeavored to act in respect to the numerous criticisms on the Bill to which he had referred. Generally he must admit that the criticisms on that Bill which had appeared in the journals at home were characterized by a spirit of fairness and moderation. He believed he might also say that many of those criticisms were not otherwise than favorable to the Bill as originally introduced by him, and he had often regretted that he had not stood firmly by that Bill, instead of consenting to the introduction of the modifications in it, which he really believed had led, in a great measure, to the Bill becoming so unpopular amongst certain classes in this country. With regard to the misrepresentations which had appeared in the public papers, whether they were wilful, or whether they proceeded from ignorance alone, he should have been well content to have left their correction to time, in the full assurance that, as the public became better informed, particularly upon the point to which His Honorable and gallant Friend and Colleague in the Government had so pointedly alluded, justice would be done them ; but as His Honorable and gallant Friend's nice sense of honor would not allow him to remain quiet under the imputations which had been cast upon him in common with the other Members of the Government, it had become his (Mr Harington's) duty, from which he could not properly shrink, to break the silence which he had proposed to himself to maintain, and publicly and fully to support and confirm what had fallen from the Honorable and gallant General.

In the remarks with which he (Mr. Harington) prefaced the Motion for the second reading of the Bill for licensing trades and professions, he explained the measures which were in contemplation in order to place the members of the Government, and the officers of Government generally, on certainly not a better footing, as regarded the taxation of their official incomes, than the various classes to which the Bill introduced by him would apply , and he distinctly stated that, although it was considered that the salaries of the Governor General and the other members of the Government as well as of several other high public officers were protected by Act of Parliament, it was not the intention of the Governor-General in Council to avail himself of that protection, but that from the date upon which the Bill should come into operation, the salaries of the Governor-General and of the

other members present with the Government would be subjected to the proposed reduction. It had certainly been insinuated that this proposal to tax official salaries was a mere after-thought. He would not however allude further to that insinuation, because he believed that it arose out of a misunderstanding, and he was glad to find that it had not been repeated in any of the public papers which he had seen. So far from the Government entertaining any intention of exempting the salaries of its own members, or of public officers generally, from the burden which it wished to impose upon other professional incomes, he might mention (he hoped without any breach of official secrecy), in confirmation of what had fallen from the Honorable and gallant President, that His Excellency the Governor-General had been the first to propose the surrender of no less than twenty per cent. of his own salary, and that the percentage proposed for the service at large was, upon the whole, greatly in excess of the rate mentioned in the Bill as now drawn. It was felt, however, that until the Council had affirmed the principle of the Bill by allowing it to be read a second time, no final decision could properly be come to in respect to the reduction to be made from official salaries, and that until that was done it would be premature to make public the intentions of the Government. This was one of the chief reasons for no communication on the subject being made to the Council when the Bill was introduced, though he was able, from his own knowledge, to say that the intentions of the Government were no secret to more than one Member of the Council, other than the Executive Members, at the time of the first reading of the Bill, and certainly not more than two of the Members were ignorant of those intentions when the Motion for the second reading was made. The reason why the silence which the Government had observed in the first instance was afterwards departed from, was to be found in the misapprehensions which had arisen on the subject, and it was hoped that the explanation afforded at the time the Motion for the second reading of the Bill was made would have been considered satisfactory, and that the Government would have been allowed to carry out its intentions. The Council, however, by a majority of votes, had thought proper to take the matter out of the hands of the Government, and having introduced a Section into the Bill which declared that, with certain exceptions, all official salaries should be taxed at the rate of three per cent. per annum, it only remained for the Government to adopt the necessary steps to have the rule extended to such of the exceptions as were considered to fall within the Act of Parliament, and no time had been lost in making the necessary application to the Home Authorities for this purpose. He must apologize for having troubled the Council at such length with a matter, in a great measure, personal to himself; but after what had fallen from his Honorable and gallant Colleague in the Government, he did not think he could have said less, or acted otherwise than he had done; nor could he resume his seat without expressing his full and hearty concurrence in all that had been said by the Honorable and gallant President in respect to the Right Honorable Gentleman who had that day taken his seat amongst them for the first time. He believed he might truly state that their only wish was to co-operate most cordially with the Right Honorable Gentleman, and to afford him all the assistance in their power. For his own part he looked forward to being associated with the Right Honorable Gentleman in his public duties with the utmost satisfaction, and he considered it to be almost impossible to over-estimate the benefits to India which might be expected to result from the Right Honorable Gentleman's appointment.

MR. WILSON said, he certainly had not intended to offer any observations to the Council to-day, for, when he took his seat, he thought there could be no occasion for him to do so. But after the observations which had been made by the Honorable and gallant President and by the Honorable Member opposite (Mr. Harington), it would not be just to his (Mr. Wilson's) own feelings nor to others if he were to be entirely silent. What he had to say, however, he would express in the fewest words, because no number of words

could add to the force or sincerity of the statement he was about to make, that from the moment of his landing on the shores of India he had met with the most cordial reception from his Honorable Colleagues. More than that, he should say that he had experienced in all quarters the most willing and anxious desire to forward the ends and purposes of his mission to India. He would not enlarge upon this subject, but he trusted that the few observations which he had made would disabuse the public mind. He would merely add that, from the Governor-General downwards, he had met with the most cordial tender of support and assistance, and he hoped that the Honorable and gallant President and the Honorable Member who had just spoken would accept his entire reciprocation of the kind and generous sentiments which they had expressed towards himself.

The Motion was put and carried.

THE CLERK presented a Petition from the Inhabitants of Bombay against the same Bill.

SIR CHARLES JACKSON moved that the above Petition be printed.

Agreed to.

THE CLERK presented a Petition from Native Merchants, Traders, and others of the Town and Island of Bombay against the same Bill.

SIR CHARLES JACKSON moved that the above Petition be printed.

Agreed to.

STAMP DUTIES.

THE CLERK presented a Petition from the Bombay Chamber of Commerce concerning the Bill "to consolidate and amend the laws relating to Stamp Duties."

MR. SCONCE moved that the above Petition be printed.

Agreed to.

CIVIL PROCEDURE.

THE CLERK presented a Petition from the Indigo Planters' Association against so much of the Bill to amend Act VIII of 1859 (for simplifying the Procedure of the Courts of Civil Judicature not established by Royal Charter) as proposes to reduce the number of Judges of the Sudder Court for the hearing of appeals.

MR. HARINGTON moved that the above Petition be referred to the Select Committee on the Bill.

Agreed to.

ARMS AND AMMUNITION.

THE CLERK presented a Petition from the Indigo Planters' Association against the Bill "to make perpetual Act XXVIII of 1857 (relating to the importation, manufacture, and sale of Arms and Ammunition, and for regulating the right to keep or use the same).

SIR CHARLES JACKSON moved that the above Petition be referred to the Select Committee on the Bill.

Agreed to.

THE CLERK presented a Petition of Mr. T. C. Fenwick against the same Bill.

MR. HARINGTON moved that the above Petition be referred to the Select Committee on the Bill.

Agreed to.

RECOVERY OF RENTS (BENGAL).

THE CLERK presented a Petition from Rajah Suttshurn Ghosal, praying that Section 161 of Act X of 1859 (to amend the law relating to the recovery of Rent in the Presidency of Fort William in Bengal) may be repealed or amended so as to abolish appeals, or, by making them summary and immediate, to reduce the time of their duration.

MR. SCONCE moved that the above Petition be printed.

Agreed to.

MARRIAGES.

THE CLERK presented a Petition from Ministers and Elders of the Church of Scotland regarding the celebration of Marriages by the Ministers of that Church in India.

MR. SCONCE moved that the above Petition be printed.

Agreed to.

SALE OF LANDS (MALACCA).

THE CLERK reported that he had received a communication from the

Officiating Governor of the Straits Settlement on the subject of a law to facilitate the sale of land at Malacca.

MR. SCONCE moved that the above communication be printed.

Agreed to.

ADEN.

THE CLERK reported that he had received a communication from the Home Department, forwarding a further communication from the Bombay Government relative to the proposed Act for making adequate provision for the administration of justice at Aden.

MR. HARINGTON moved that the above communication be printed.

Agreed to.

TRANSPORTATION OF CONVICTS.

THE CLERK reported that he had received a communication from the Home Department, with Extracts of a Despatch from the Secretary of State, on the subject of the Transportation of Convicts.

MR. HARINGTON moved that the above communication be printed.

Agreed to.

TAX ON DOGS (STRAITS SETTLEMENT).

THE CLERK reported that he had received a communication from the Governor of the Straits Settlement relative to a proposed imposition of a tax upon Dogs throughout that Settlement.

SIR JAMES OUTRAM moved that the above communication be printed.

Agreed to.

NATIVE CHRISTIANS.

THE CLERK reported that he had received a communication from the Bengal Government forwarding copies of papers on the subject of the law in relation to the claims of Native Christian Converts upon their families detained by their Heathen relatives.

MR. SCONCE moved that the above communication be printed.

Agreed to.

NATIVE PASSENGER VESSELS (BAY OF BENGAL).

THE CLERK reported that he had received a communication from the Home Department, with Extract of a Despatch from the Secretary of State, respecting the evasion of the provisions of the Native Passengers' Act I of 1857.

MR. FORBES moved that the above communication be printed.

Agreed to.

MILITARY CANTONMENTS.

THE CLERK reported that he had received a communication from the Military Department regarding the expediency of passing an Act empowering Cantonment Magistrates at Stations where there are European Troops to expel all persons considered unfit to remain therein.

MR. HARINGTON moved that the above communication be printed.

Agreed to.

MAGISTRATES.

THE CLERK reported that he had received a communication from the Bengal Government, with a copy of a correspondence relative to a proposed increase of the powers of Magistrates.

MR. HARINGTON moved that the above communication be printed.

Agreed to.

ESTATE OF THE NABOB OF THE CARNATIC.

THE CLERK reported that he had received a communication from the Home Department forwarding a communication from the Madras Government, furnishing copies of the judgments delivered by the Judges of the Supreme Court at Madras in the case of Gunshum Doss.

SIR CHARLES JACKSON moved that the above communication be printed, and the consideration of the same stand over till the return of the Honorable and learned Vice-President.

Agreed to.

MUNICIPAL ASSESSMENT (SINGAPORE).

THE CLERK reported that he had received a communication from the Home Department, forwarding copies of papers respecting the necessity of raising the maximum of the Municipal rates and taxes at Singapore.

MR. SCONCE moved that the above communication be printed.

Agreed to.

MAGISTRATES.

THE CLERK reported that he had received a communication from the Home Department, forwarding a copy of papers relative to the power of a Magistrate to punish persons convicted of the offence of leasing young girls for the purpose of prostitution

MR. HARINGTON moved that the above communication be printed.

Agreed to.

ARMS AND AMMUNITION.

MR. HARINGTON said, it would be in the recollection of the Council that in the month of August last he introduced a Bill for making perpetual Act XXVIII of 1857 (relating to the importation, manufacture, and sale of arms and ammunition, and for regulating the right to keep or use the same); and as the duration of that Act had been limited to two years, of which only a small portion remained, he asked the Council to suspend the Standing Orders in order that the Bill brought in by him might pass rapidly through its several stages, the object being to prevent any cessation in the operation of the law which was being vigorously and successfully carried out at the time in most of the districts in the Upper Provinces. Some Honorable Members, however, objected to decide off-hand upon the expediency or otherwise of giving permanency to the law in question, and as they required further time for consideration, it was agreed that a temporary Act should at once be passed for continuing Act XXVIII of 1857 in force until the close of the current year, and that a separate Bill should be introduced for making the law perpetual, which, if allowed by the Council to be read a second time, would be published for general information, and might afterwards be proceeded with in the usual way. The temporary Act received the assent of His Excellency the Governor-General on the 13th August, and the disarmament of the Native population was now being carried on under its provisions, though, as noticed, it would expire in a few days. No time was lost in bringing in a separate Bill, which was read a second time on the 27th August, and was referred on the same day to a Select Committee, who were desired to make their report on or after the 1st December. The report was therefore now due; but circumstances had hitherto prevented the Committee from meeting to consider the Bill, and no communications had as yet been received from the local Governments. It was moreover considered very desirable that the Bill should be carefully considered by the full Council, for which there would hardly be time before the temporary Act now in force expired, particularly as three of the Members of the Council were still absent, and they were about to lose for a time the services of the Right Honorable Gentleman opposite (Mr. Wilson). It had therefore appeared to him (Mr. Harington) that the better plan would be to pass another temporary Bill extending Act XXVIII of 1857 for three or six months, although he should prefer the longer period. This would prevent the inconvenience which would arise were Act XXVIII of 1857 to be allowed to expire before a new Act was passed, and it would also allow ample time for the consideration of what was intended to be a permanent measure. Another reason which appeared to him to render it advisable to pursue the course which he had just mentioned was that he had been informed by his Honorable Friend the Member for Bengal that he intended to move to day for certain returns connected with the working of Act XXVIII of 1857 which could not possibly be prepared and laid before the Council under two or three months.

He had therefore the honor to give notice that at the next meeting of the

Council he should move the first reading of a Bill to continue Act XXVIII of 1857 in force for a further period of six months, that is to say, from the 1st January to the 20th June 1860 inclusive; and that if the Council allowed the Bill to be read a first time, he should ask permission to suspend the Standing Orders with a view to the Bill passing through its remaining stages on the same day.

LAND FOR PUBLIC PURPOSES.

MR. FORBES moved that a commission received by him from the Madras Government be laid upon the table and referred to the Select Committee on the Bill "to amend Act VI of 1857 (for the acquisition of land for public purposes)."

Agreed to.

POLICE (PRESIDENCY TOWNS AND STRAITS SETTLEMENT).

MR. FORBES moved that a communication received by him from the Madras Government be laid upon the table and referred to the Select Committee on the Bill to amend Act XIII of 1856 (for regulating the Police of the towns of Calcutta, Madras, and Bombay, and the several stations of the Settlement of Prince of Wales' Island, Singapore, and Malacca.)"

Agreed to.

NATIVE PASSENGER VESSELS (BAY OF BENGAL).

MR. FORBES moved that a communication received by him from the Madras Government be laid upon the table and referred to the Select Committee on the Bill "to prevent the over-crowding of Vessels carrying Native Passengers in the Bay of Bengal."

Agreed to.

MALABAR OUTRAGES.

MR. FORBES moved that a Despatch from the Secretary of State relative to the Bill (which was passed as Act XX of 1859) "for the suppression of Outrages in the District of Malabar in the Presidency of Fort St. George" be printed.

Agreed to.

Mr. Harington

NATIVE PASSENGER VESSELS (BAY OF BENGAL).

MR. FORBES gave notice that he would, at the next Meeting of the Council, present the Report of the Select Committee on the Bill "to prevent the over-crowding of Vessels carrying Native Passengers in the Bay of Bengal;" and that he would on the same day move for a suspension of the Standing Orders in order that the Bill might be passed through its remaining stages. In doing so he said that this Bill was in amendment and continuation of Act I of 1857, which would expire on the 7th of the following month. The Report of the Select Committee on the Bill was not due till after this day; and if the Bill were to be proceeded with in accordance with the ordinary course, it was probable the present law would expire before the new Bill could receive the assent of the Governor-General. To avoid this inconvenience, he proposed at the next Meeting of the Council to move for a suspension of the Standing Orders with a view to the Bill being passed through its remaining stages forthwith. The law which the new Bill would continue had been in force for three years, and he did not anticipate that any objection would be made to the course which he proposed to take.

ARMY AND STATE OFFENCES.

MR. HARINGTON gave notice that he would at the next Meeting of the Council move the first reading of a Bill to continue in force for a further period of one year Acts XIV, XVI, and XVII of 1857, and that, if the Council allowed the Bill to be read a first time, he should ask permission to suspend the Standing Orders with a view to the Bill passing through its remaining stages on the same day.

In giving this notice, he said it seemed right that he should state briefly at this time the reasons which had led the Government to consider that the Acts which he had mentioned should continue in force some little time longer. It was originally intended that those Acts, which were called into existence by the peculiar and extraordinary circumstances of the period when they

were proposed, should continue in force for one year only. They were afterwards extended, as the Council were aware, to the end of the current year, by which time it was confidently expected that all necessity for them would cease, and such was indeed the case as regarded the greater part of the country. But the Honorable the Lieutenant-Governor for the North-Western Provinces had strongly urged upon the Government the advisability of continuing the Acts in force for the further period of a year to enable him to continue a tribunal which had been established by him, with the sanction of the Supreme Government, for the trial of mutinous sepoys. Of these a large number were now under trial before the tribunal to which he had referred; others were daily surrendering themselves for trial or were being arrested. On the Oude Frontier, as was probably known to the Council, operations were going on against the rebels who had taken refuge in the Nepaul Territory. These included several persons of note, and it was very desirable that, as they were arrested, they, as well as the mutineers to whom he had alluded, should be tried by the same tribunal and under the same law as would have been the case had their arrest or surrender taken place at any time during the last two years, rather than that they should be made over to the regular Courts which had already sufficient business of their own to attend to. In some parts of Bundelkund also, as the Council must have observed from the public prints, a large number of rebels had collected. These were now being pursued and captured by our troops. To them, as regarded the trial of any who might surrender or be arrested, the remarks which he had just made equally applied. With this explanation before them he hoped the Council would consent to the extension of the Acts to which his notice referred, under the assurance that they would be applied only to persons of the classes described by him, and that crimes which were being committed in the districts in which tranquillity had been restored would be left to be disposed of by the ordinary tribunals under the general Regulations.

ARMS AND AMMUNITION.

MR. SCONCE said, he ought possibly to have prepared the Council as to the terms of the Motion which he was about to make, and to which the Honorable Member opposite (Mr. Harington) had alluded. What he (Mr. Sconce) proposed was that a Message should be sent to the President in Council calling for information as to the working of the Arms Act XXVIII of 1857. That was a temporary Act, and it seemed to him important that, before making it perpetual, the Council should be in possession of full information as to the use which had actually been made of it, and that they should know in what Districts, Provinces, and places it had been actually brought into operation. He would remind the Council that the law in question was not one single in its object. It not only provided for the general disarmament of whole districts, but there were various other provisions which, though homogeneous in their character, were distinct one from the other, and might be enforced independently of each other. One Section provided for a registration of Arms. Another was prohibitory of the manufacturing and dealing in Arms without a license. Another prohibited the importation, and another the transport of Arms, &c. Under the Act therefore a multiplicity of powers was created; and while one Governor might think it necessary to put the whole Act or part of it in force, another Governor might choose to dispense with the aid which it was intended to afford him. It was a matter of notoriety that the Bengal Government had put the 24th Section relative to a general search for Arms into operation in the district of Shahabad: but it seemed to him to be of importance that the Council should have upon it explicit information both as regards the adoption of this Section, and the use made, if any had been made, of the other Sections of the temporary Act. Similar remarks would apply to Madras and Bombay.

He should therefore move that a Message be addressed to the Honorable the President in Council, stating that inasmuch as a Bill was now pending before the Legislative Council to make perpetual the temporary Act XXVIII of 1857, it

was the desire of this Council that the information indicated in the following queries relative to the actual working of the Act be procured and communicated to the Legislative Council :—

1. In what Provinces, Districts, or places has a general search for Arms, Ammunition, or Sulphur been ordered under Section XXIV Act XXVIII of 1857, and carried out, stating, if possible, in the case of each District or place, the commencement and completion of the search; and stating also the number of the different sorts of Arms seized ?

2. To what Provinces, Districts, or places have Sections I and V of the above Act been extended, stating whether the extension applies to other places than those in which a general search has been ordered ?

3. To what places have Sections VII and VIII, prohibitory of the manufacturing and dealing in Arms without a license, been extended ?

4. In what places has the prohibition to import Arms, Ammunition, Sulphur, and Saltpetre been enforced under Section XII, and is continued in force ?

5. In what places has the transport of Arms &c. been prohibited under Section XV, and is still prohibited ?

6. In what places has the sale of Sulphur been prohibited under Section XVIII, and is still prohibited ?

7. In what places have the making and keeping of Cannon &c. without a license been prohibited under Section XXVI, and are still prohibited ?

Agreed to.

MR. SCONCE moved that Mr. Ricketts be requested to take the above Message to the President in Council.

Agreed to.

MARKETS.

MR. RICKETTS moved that Mr. Forbes and Mr. Sconce be added to the Select Committee on the Bill "for regulating the establishment of Markets."

Agreed to.

TOLLS (EASTERN CANAL).

MR. SCONCE gave notice that he would, at the next Meeting of the Council, move the first reading of a Bill to amend and extend Act XXII of 1836, relating to the levy of Tolls in the Eastern Canal.

CRIMINAL APPEALS.

MR. SCONCE moved that a correspondence received by him from the Bengal Government, relative to the admissibility or otherwise, by the Nizamut Adawlut, of second appeals in judicial proceedings of the Fouzdary Courts other than Criminal trials, when those Courts act without having jurisdiction, be printed.

Agreed to.

The Council adjourned at half past 12 o'clock, on the Motion of Mr. Ricketts, to Wednesday, the 7th Instant, at ½ past 10 o'clock.

Wednesday, December 7, 1859.

PRESENT:

The Hon. Lieut.-Genl. Sir James Outram, Senior Member of the Council of the Governor-General, presiding.

Hon. H. Ricketts,
Hon. H. B Harington,
Rt. Hon. J. Wilson,
H. Forbes, Esq.,
Hon. Sir C. R. M Jackson,
and
A. Sconce, Esq.

LICENSING OF TRADES AND PROFESSIONS.

THE CLERK presented two Petitions from the Inhabitants of Poona against the Bill "for the Licensing of Trades and Professions."

MR. HARINGTON moved that the above Petitions be printed.

Agreed to.

POLICE (PRESIDENCY TOWNS AND STRAITS SETTLEMENT).

THE CLERK reported to the Council that he had received a communication from the Governor of the Straits Settlement on the subject of empowering Magistrates to take cognizance in certain cases of offences against Act IV of 1839 (stealing growing trees, &c.).

SIR JAMES OUTRAM moved that the above communication be referred to the Select Committee on the Bill "to amend Act XIII of 1856 (for re-

gulating the Police of the Towns of Calcutta, Madras, and Bombay, and the several stations of the Settlement of Prince of Wales' Island, Singapore, and Malacca."

Agreed to.

MERCHANT SEAMEN.

THE CLERK also reported that he had received a communication from the Governor of the Straits Settlement, with a Memorial from Messrs. Alla Petchey and Emansah, Ship-owners at Singapore, praying for a modification of Act I of 1859 (for the amendment of the law relating to Merchant Seamen).

MR. SCONCE moved that the above communication be printed.

Agreed to.

NATIVE PASSENGER VESSELS (BAY OF BENGAL).

MR. FORBES presented the Report of the Select Committee on the Bill "to prevent the overcrowding of vessels carrying Native Passengers in the Bay of Bengal;" and, in accordance with the notice which he gave last Saturday, he moved that the Standing Orders be suspended, in order that the Bill might be carried through its remaining stages to-day. The object he had in view, as he had said before, was that the Bill might be passed before the expiration of the present law, thereby to prevent the great public inconvenience which would otherwise of necessity be the result.

MR. HARINGTON seconded the Motion, which was put and carried.

MR. FORBES then moved that the Council resolve itself into a Committee on the Bill, and that the Committee be instructed to consider the Bill in the amended form in which the Select Committee had recommended that it should be passed.

Agreed to.

The Bill passed through Committee after an amendment in Section XVIII, and, the Council having resumed its sitting, was reported.

MR. FORBES moved that the Bill be read a third time and passed.

The Motion was carried and the Bill read a third time.

MR. FORBES moved that Mr Ricketts be requested to take the Bill to the President in Council in order that it might be submitted to the Governor-General for his assent.

Agreed to.

ARMS AND AMMUNITION.

MR. HARINGTON moved the first reading of a Bill "to continue in force for a further period Act XXVIII of 1857 (relating to the importation, manufacture, and sale of Arms and Ammunition, and for regulating the right to keep or use the same)." In giving notice of this Motion at the last meeting of the Council, and of his intention, in the event of the Motion being carried, to ask permission to suspend the Standing Orders with a view to passing the Bill at once through its remaining stages, he had stated the reasons which appeared to him to render it desirable that he should bring in a temporary Bill for continuing Act XXVIII of 1857 in force for the further period of six months, instead of pressing on at this time the Bill which he had introduced into the Council in August last for making the Act perpetual. At the time he brought in that Bill he had every reason to expect that there would be ample time for a full discussion and consideration of the subject before the close of the present year, but that expectation had not been realized, owing to circumstances which could not have been foreseen or guarded against; and as he believed that some Honorable Members desired further time for consideration, as well as further information as to the working of Act XXVIII of 1857, and as it was also desirable that the Bill should be discussed in a full Council, the only way to prevent the inconvenience which would result if the law were allowed to expire was to pass a temporary Act.

The Bill was read a first time.

MR. HARINGTON, pursuant to notice, moved that the Standing Orders be suspended, in order that the Bill might be passed at once through its remaining stages.

MR. FORBES seconded the Motion, which was carried.

MR. HARINGTON then moved the second reading of the Bill.

The Motion was carried, and the Bill read a second time.

MR. HARINGTON moved that the Council resolve itself into a Committee on the Bill.

SIR CHARLES JACKSON said, it was not his intention to offer any opposition to the passing of this Bill, which would be a temporary measure. He should reserve his objections till the other Bill to make Act XXVIII of 1857 perpetual was again brought forward, when he should have the benefit of the assistance of the Honorable and learned Vice-President, who also entertained objections to some of its provisions.

The Motion was carried.

The Bill passed through Committee without amendment, and, the Council having resumed its sitting, was reported.

MR. HARINGTON moved that the Bill be read a third time and passed.

The Motion was carried, and the Bill read a third time.

MR. HARINGTON moved that Mr Ricketts be requested to take the Bill to the President in Council in order that it might be submitted to the Governor-General for his assent.

Agreed to.

ARMY AND STATE OFFENCES.

MR. HARINGTON moved the first reading of a Bill "to continue in force, for the further period of one year, Acts XIV, XVI, and XVII of 1857." He said that, with the permission of the Council, he would read the remarks which he had made at the last meeting of the Council at the time of giving notice of his intention to move the first reading of this Bill to-day, and, in the event of that Motion being carried, to ask for the suspension of the Standing Orders, with a view to passing the Bill at once through its remaining stages. He was not aware that he could add any thing to those remarks, and he would therefore now only move that the Bill be read a first time.

The Bill was read a first time.

MR. HARINGTON moved that the Standing Orders be suspended, in order that the Bill might be passed at once through its remaining stages.

MR. FORBES seconded the Motion.

MR. SCONCE said, before the Council came to a vote on the question before them, there were some remarks which he should wish to submit for their consideration, not only in respect to one, but more of the Acts which were now proposed to be extended. There were three Acts which this Bill proposed to continue in force, Acts XIV, XVI, and XVII of 1857. Of these he would first notice Act XVI, which was an Act to make temporary provision for the trial and punishment of heinous offences in certain districts. Now among the reasons which his Honorable friend opposite (Mr. Harington) gave to the Council for the renewal of the three Acts, as contained in his speech at the last Meeting, they were told that the Lieutenant-Governor of the North-Western Provinces considered it necessary that his hands should still be strengthened for the trial and punishment of mutinous sepoys and rebels. Now Act XVI of 1857 applied neither to rebels nor to mutinous sepoys. It was an Act for the trial and punishment of heinous offences, and it provided that, whoever should commit, or attempt to commit any heinous offence, should be liable on conviction to the punishment of death, or to the punishment of transportation for life, or of imprisonment with hard labor for any term not exceeding fourteen years. Such was the general provision contained in the first Section. The second Section declared that the words "heinous offence" should be deemed to include an attempt to murder, rape, maiming, dacoity, robbery, burglary, and knowingly receiving stolen property, &c, and it was with regard to this Section that he had great objection. According to this Section robbery was a heinous offence, and so also were burglary and receiving property obtained by burglary. If therefore this Act were continued, any person in any district in the North-Western Provinces, who should be convicted of stealing by burglary, and any midnight robber, might be hanged.

MR. HARINGTON.—Only in Districts to which the Act was extended.

MR. SCONCE continued—precisely so, and the want of any limit to its possible extension was what he objected to. A simple burglary, a simple receipt of property the results of such burglary, was by this Act rendered a capital.

offence. More than that, the stealing of property which had been provided for troops was also a capital offence. If a man were to steal a bundle of hay which belonged to the Commissariat, he might be sentenced to imprisonment not exceeding fourteen years, but he also might be sentenced capitally. Again, the breaking of the spokes of a cart-wheel would also be a capital offence. It seemed to him doubtful that the Council should be called upon to give any one the power to hang petty thieves and robbers. He had heard nothing which should induce him to suppose that the hands of the Government of the North-Western Provinces could thus be in any way strengthened. As he understood, it was the desire of the Lieutenant-Governor of the North-Western Provinces to continue a tribunal which he had established for the trial of mutinous sepoys and rebels. But he desired to remark that, for the attainment of this asserted object, two Acts other than that to which allusion is now made placed ample power in the hands of the Executive. Apart from other considerations to which he should presently allude, if it was merely the trial of rebels for which the Lieutenant-Governor was concerned, that was fully provided for by Act XI of 1857 which was a permanent law. The language of the first Section of this Act was unmistakably applicable to rebels, for it applied to any person who should rebel or wage war against the Government, or should instigate or abet rebellion; while special jurisdiction for the trial of any such offences was created by Section VII Act XIV of 1857 So much then as to rebels: and as to mutinous sepoys, their case was expressly provided for by Act XVII of 1857, a law which, according to its title, was enacted for the trial of Native Officers and Soldiers for mutiny and desertion. If therefore we were to regulate our acceptance of the Bill now submitted to the Council by the ground shown for its enactment, it would appear that the Executive Government was vested with abundant powers, irrespectively of Act XVI of 1857. The Lieutenant-Governor of the North-Western Provinces desired, they were told, to retain laws for the punishment of mutiny and rebellion; and such laws are to be found in Acts XIV and XVII of 1857; not at all in Act XVI of that year, which applied to heinous offences exclusive of rebellion and mutiny. It seemed to him therefore, upon the whole, that the Council could not with a due regard to its own responsibilities give such great powers at this time (three years after the occurrence of the late mutiny), or give its countenance to the continuance of an Act passed during that time. He said nothing to question the policy of originally enacting the law. In the year 1857 the hand of every man might be said to have been raised against his neighbor; any act of violence was an act of rebellion: but it was different now, and it appeared to him that they should not give the Lieutenant-Governor of the North-Western Provinces, or any Governor, the power of hanging a midnight robber, or a petty thief. But there was another matter which had occurred to him within the last few hours, and which induced him to regard this measure with more or less doubt; it was one worthy of consideration. On the 1st of November last was promulgated an Amnesty by the Proclamation of Her Majesty, and one Section of this Proclamation ran as follows: —

"Our clemency will be extended to *all* offenders, save and except those who have been or shall be convicted of having directly taken part in the murder of British subjects. With regard to such, the demands of justice forbid the exercise of mercy."

The first question he desired to put was whether, by re-enacting Act XVI of 1857, they would go back to offenders to whom Her Majesty had extended her clemency. He did not know up to what date this Amnesty as to general offences applied; possibly to the 1st of November 1858 at least. Therefore it seemdd to him that, with respect to the offences covered by the Clause which he had quoted, and assuming that offenders already pardoned should not be again declared liable to punishment, they were bound to indicate in this new Bill that the renewal of Act XVI of 1857 for the punishment of heinous offences should have effect only against offences committed subsequently to the date of the Proclamation. But the same question arose as to the other Acts which his Honorable friend

opposite had asked them to continue. In the 7th Section of Act XIV of 1857 provision was made first for the trial of offences committed under Sections I and II of Act XI of 1857, which applied to rebellion, and to which he had already alluded. If Her Majesty had pardoned simple rebellion committed up to a certain date, it would be altogether impossible on their part, in the face of the Proclamation, to re-enact a law which would permit the Executive Government to take cognizance of the crime of simple rebellion *which had been pardoned on the 1st November* 1858, and *which had not been continued or revived subsequent to that date.* But by the same Section VII of Act XIV, any heinous crime might be punishable by the Commission which the Government of the North-Western Provinces had under the Act power to issue: and for the reasons already given, it seemed to him obvious that the new Bill should be so qualified as not to continue a jurisdiction to try heinous offences generally, on the footing that they might be tried under the original Act, but only such heinous offences as had been perpetrated subsequently to the date of the Amnesty. He excluded from consideration both subsequent acts of rebellion and subsequent heinous crimes, and the proposed law, according to his idea of intelligent legislation, should give no countenance to the revival of amnestied offences. Similar remarks applied to Act XVII of 1857. With certain qualifications mutiny and desertion were embraced in Her Majesty's Amnesty; and it seemed to him that they ought not to renew a law, drawn in terms which ignored the facts that had intervened between the enactment of the original law in 1857 and the present time. With these observations, therefore, it seemed to him that, without more information than they now possessed, or without very material modifications in the Act, he was under the necessity of opposing the Motion for the suspension of the Standing Orders.

MR. HARINGTON said, it could not be denied that the Acts, which it was desired to retain on the Statute Book for the further period of a year, were special Acts, and that the punishments which they prescribed for some of the offences enumerated in them were extremely severe, so much so, indeed, that the infliction of those punishments could be justified only by very special and extraordinary circumstances. But it was just those special and extraordinary circumstances which, having called the Acts in question into existence the year before last, rendered it advisable, in the judgment of the Executive Government, that they should be allowed to continue in force some little time longer. Not that there was any parallelism between the state of the country at the present time and at the time when those Acts were passed, or when they were afterwards renewed. Happily this was not the case. Indeed, it was scarcely possible to conceive any thing more different. Of this they could desire no better proof than was afforded by the glorious but peaceful tour lately made by His Excellency the Viceroy and Governor General of India through the very places which only a few months ago were the scenes not only of open rebellion against the Government, but of crimes of the most revolting character. Still, as had already been mentioned to the Council, there was a large body of rebels on the Oude Frontier, as well as on the borders of Goruckpore, against which our troops were operating in conjunction with the troops of the Nepalese Government, and there was a large number of rebels in Bundelkund against whom operations were also being carried on, and it seemed very desirable that the Civil Officers or Officers exercising Civil functions with the Military Columns employed in those places should possess all the powers described in the Acts under consideration for the trial and punishment of the persons who might be apprehended by them. Surely these persons had no particular claim to mercy or to be treated more leniently than they would have been had they been arrested a year ago. Every effort had been made by the Government to induce all those who were still in arms against us to surrender. Her Majesty's most gracious amnesty, to which the Honorable Member for Bengal had referred, had been proclaimed again and again throughout all parts of the country, and the conduct of the Government towards those who had surrendered under

it must have shown how anxious and willing the Government were to give the widest latitude of construction to the offers of mercy contained therein. Many persons had accepted those offers and were now living peaceably in their villages, but a great many obstinately refused to come in, and the Government had consequently been obliged to adopt active measures to cause their apprehension and to rid the country of them. He confessed that he had no compassion for these miscreants; that he had no sympathy with them. The Honorable Member for Bengal had overlooked that part of Her Majesty's proclamation which fixed a period for the operation of the Royal clemency. That period had long expired and there were large bodies of men still in arms against the Government and acting in open defiance of it.

MR. SCONCE said, no part of his observations applied to acts of present rebellion. He did not mean to include those who were now opposed to the Government. But these Acts would apply to offences committed before the promulgation of Her Majesty's proclamation, and not subsequently continued or repeated.

MR. HARINGTON continued, he had mentioned that the period of the Amnesty was limited. The Honorable Member for Bengal asked whether the Government intended to act in opposition to the terms of the royal proclamation; whether by re-enacting Act XVI of 1857 they would go back to offenders to whom Her Majesty had extended her clemency. He (Mr. Harington) thought that the Honorable Member for Bengal had no right to put such a question. The Honorable Member must be aware that it was quite impossible for the Government to do anything contrary to the terms of Her Majesty's proclamation. But a large number of persons had refused to avail themselves of the offers of mercy held out to them, and the Government had come down to the Council and asked it to continue certain laws in force which were considered necessary for the punishment of those persons.

He well recollected that when the renewal of the three Acts, to which his present motion referred, was proposed to the Council last year, both he (Mr. Harington) and the predecessor of the Honorable Member for Bengal thought that some mitigation of the stringent provisions of Act XVI of 1857 might be allowed. They were however told by the Members of the Executive Government that it was thought better that the Act should continue in force as it was originally passed, but that the Council might rest assured that the provisions of the Act would be put in force in those cases only in which their enforcement was strictly just and proper and called for by the circumstances. Mr. Currie and himself were contented with that assurance, and he certainly had had no reason to repent the confidence which he had reposed in the Government. A similar assurance had been given to the Council on the present occasion, and he thought that the Honorable Member for Bengal might safely accept the same and withdraw his opposition to the Bill before the Council, and that in giving to the Executive Government the powers for which it had asked, and which it deemed necessary, for the proper administration of the country, he need be under no apprehension that, in the exercise of those powers, the Government would be guilty of any abuse of them. In thus trusting the Executive Government, he (Mr. Harington) did not think that the Honorable Member for Bengal would be acting inconsistently with his duty, or with the object of his appointment to this Council, which was to assist in making the laws which were necessary to enable the Executive Government to carry on the Executive duties of the country. It seemed to him (Mr. Harington) that the Honorable Member did not sufficiently distinguish between Executive and Legislative functions. It was no doubt difficult to know where to draw the line, but from what had taken place on this and on former occasions, he thought that the Honorable Member was disposed to place himself, in his legislative capacity, rather in antagonism to the Executive Government. This no doubt arose from an extreme anxiety on the part of the Honorable Member faithfully to discharge his own duties, which was very laudable, but, at the same time, he thought the Honorable Mem-

ber should be careful not to throw obstacles in the path of the Executive Government in the performance of its Executive duties. Those duties were of a very responsible and important nature, and he certainly thought that the Honorable Member for Bengal might exhibit a more trusting spirit towards the Executive Government, and confide more fully in it than he appeared disposed to do. The representative Members of this Council were not sent there for the protection of the people against the Executive Government, but to assist in making the laws which were considered by the Executive Government necessary to enable it to exercise its functions for the benefit of all classes.

The question being put, the Council divided —

Ayes 5.	*Noes* 2.
Mr. Forbes.	Mr. Sconce.
Mr. Wilson.	Sir Charles Jackson.
Mr. Harington.	
Mr. Ricketts.	
The President.	

So the Motion was carried.

MR. HARINGTON then moved that the Bill be read a second time.

SIR CHARLES JACKSON said, he must offer a few observations on the remarks of the Member opposite (Mr. Harington), although, when he came into the room this morning, it was not his intention to say a word on the subject of the Bill. He certainly thought that the Honorable Member for Bengal had been exceedingly temperate in the manner in which he had expressed his objections to this Bill, and there was not the slightest foundation for the remarks which had fallen from the Honorable Member opposite. He (Sir Charles Jackson) could not conceive that any Honorable Member could have spoken in a less antagonistic spirit than the Honorable Member for Bengal. That Honorable Member had simply pointed out that the present law provided the punishment of death for persons convicted of such crimes as robbery and burglary; that under that Act a man might be sentenced to death for stealing a bundle of hay belonging to the troops; and he asked the Council if they wished to have recourse at the present time to such an extreme measure; and really there was nothing that evinced a spirit of hostility to Government in such a statement.

He (Sir Charles Jackson) found no fault with the passing of that Act in 1857. It was passed in a troublous time, as a rough and ready remedy for the punishment of mutineers and rebels, and was, in fact, equivalent to the establishment of Martial Law. The question which they had to consider in a calm and temperate manner was whether the Act was now necessary when the greater part of the country had settled quietly down, or to what extent it was necessary. According to the statement of the Honorable Member opposite, there were at the present time only two or three districts in a troublous state. That was a good reason why they should re-enact the Law as regards those disturbed districts, namely, Bundelkund, Goruckpore, and the territories bordering on Nepal. The Honorable Mover had made out a case for the re-enactment of this measure with respect to those places; but why he should ask for a general Law of this exceptional nature applicable to all India, he (Sir Charles Jackson) could not understand. He did not suggest this in any spirit of antagonism, but as a Member of the Council. They were, it is true, the advisers of the Executive, and he for one accepted that view of his position in that Council; but they were also the independent advisers of the Government, and were not to be taken to task whenever they thought fit to differ from the Executive.

MR. HARINGTON said that the Council had already received through him the assurance that the Government had no present intention of extending the operation of the Acts which it was proposed to continue in force for a few months longer beyond the places mentioned by him, namely, Goruckpore, Oude, and Bundelkund, in which places it seemed to be admitted by the Honorable and learned Judge opposite (Sir Charles Jackson) that a sufficient case had been made out for their continuance; but it was impossible to say what might occur in the course of the operations now being carried on. The rebels on the Frontier might find their way into places in Bengal,

Chuprah or Tirhoot, for instance, where tranquillity now prevailed, and they might be joined by some of the people of those places, in which case, if the operation of the Acts were limited by the terms of the law to particular localities, it would be necessary for the Government to ask the Council to extend them. It appeared to him that this would be attended with inconvenience, and that it would be better to keep the Acts general as they had been passed originally, and to leave the Executive Government to put them in force where they were found to be absolutely needed as had hitherto been done.

SIR CHARLES JACKSON said, it must not be supposed that he wished to throw the slightest doubt on the assurances which had been made by the Honorable Mover of this Bill. He never for one moment doubted the humanity with which these measures would be carried out by the Governor General or the other Governors. But he must say, if they were called upon to pass Acts on these grounds, they were asked to proceed on an entirely new principle of Legislation.

MR. SCONCE said, it might perhaps be more convenient to the Council that he should propose in the form of amendments those alterations which he might consider necessary in order to make an imperfect law more perfect. Apart from the terms of the law, and with reference to the remarks of his Honorable friend opposite (Mr. Harington), he (Mr. Sconce) thought that he saw no advantage in discussing the theory and constitution of his own office. His Honorable friend had asked them to repose confidence in the Executive Government. His (Mr. Sconce's) opinion agreed with that of the Honorable and learned Judge. He was prepared to give the Government every confidence, but when he spoke of confidence as a Member of this Legislature, he meant confidence within the scope of legal action, a confidence in acts done within the limits that the Legislature might prescribe. If they proceeded upon that principle, how could he be upbraided with acting antagonistically towards the Government? But upon these personal questions, it was unsatisfactory and painful to him to say more. He would keep to the prominent points before the Council. His Honorable friend had still admitted that rebellion and mutiny were the offences for which these Acts were required. His (Mr. Sconce's) objection was not as regards offences committed under rebellion or mutiny, but as regards heinous offences perpetrated by persons not mutineers or rebels. Again, however carefully he had listened to the remarks of his Honorable friend opposite, he had heard no explanation as to the effect which this Bill would have in confounding offences committed before and after the proclamation of Her Majesty's Amnesty. It seemed to him that this Legislature would sink its intelligence as to the rightness and fitness of things if it passed the present Bill, and, without an express recognition of the admitted facts, allowed offences which had already been pardoned by Her Majesty to be liable to punishment. With these remarks he begged to oppose the motion for the second reading of this Bill.

The question being put, the Council divided —

Ayes 5.	Noes 2.
Mr. Forbes.	Mr. Sconce.
Mr. Wilson.	Sir Charles Jackson.
Mr Harington.	
Mr. Ricketts.	
The President.	

So the motion was carried and the Bill read a second time.

MR. HARINGTON moved that the Council resolve itself into a Committee upon the Bill.

Agreed to.

Section I provided as follows:—

"Acts XIV of 1857, XVI of 1857, and XVII of 1857 shall continue in force until the end of the year 1860."

MR. SCONCE said, he desired to move an amendment in Section I Act XVI of 1857. That Section ran thus:—

"Whoever shall commit or attempt to commit any heinous offence in any District or place in which Martial Law hath been or shall be established, or in any District or place to which this Act shall be extended by order of the Governor General of India in Council, shall be liable, on conviction, to the punishment of death, or to the punishment

of transportation for life or of imprisonment with hard labor for any term not exceeding fourteen years; and shall forfeit all his property and effects of every description."

The amendment which he proposed was to introduce a proviso into the Bill re-enacting that Section with the omission of the words "to the punishment of death or." He also intended to move an alteration in Section II of that Act, which he proposed should run thus:—

"The words 'heinous offence' shall be deemed to include an attempt to murder, rape, wounding with intent to kill, dacoity, robbery, plundering with open violence, and arson, provided the same shall have been committed with the intention of assisting any persons who at the time of commission were or are waging war or in arms against the State or forwarding their designs."

He had purposely excluded maiming, burglary, stealing army provisions, violent assaults &c, and the offences which he desired to retain were "an attempt to murder, rape, wounding with intent to kill, dacoity, robbery, plundering with open violence, and arson." But he had also added a proviso which he considered indispensable because salutary. They must not, he thought, transport a person for simple robbery or simple plunder, unless those offences were committed with the view of aiding the purposes of those who were in arms against the Government. The amendment which he should now move was the addition of the following proviso to the Section of the Bill under consideration:—

"Provided, that, in lieu of Section I Act XVI of 1857, the following Section be substituted (that is to say) 'Whoever shall commit or attempt to commit any heinous offence in any district or place in which Martial Law hath been or shall be established, or in any district or place to which this Act shall be extended by order of the Governor-General of India in Council, shall be liable, on conviction, to the punishment of transportation for life, or of imprisonment with hard labor for any term not exceeding fourteen years, and shall forfeit all his property and effects of every description.'"

MR. HARINGTON said, it had been suggested to him by the Honorable Member for Madras that, if the amendment of the Honorable Member for Bengal were adopted with the proviso attached thereto, it would be exceedingly difficult for the Officers, who had to administer the law, to determine in a case of rape, for instance, that the crime was committed with the intention of assisting those who were waging war against the State or forwarding their designs, which would be essential to a conviction under the Act as proposed to be amended.

MR. SCONCE remarked that this proviso was contained in the law as it now stood.

MR. HARINGTON continued, but it did not apply to a case of rape, which offence he (Mr. Harington) supposed would generally be committed for the gratification of the passions of the man committing the same without much regard to the State or designs against the State. Let that however pass. The principal objection which he (Mr. Harington) had to the proposed amendment was that it might often tend to considerable inconvenience from the difficulty and, indeed, impossibility of guarding the persons apprehended, particularly if in large numbers, and of conveying them from place to place before they could be delivered over for transportation. He recollected an instance in which a Civil Officer was attacked in the early part of the mutinies by a band of men, three of whom he killed with his own hand, and three others, who were seized, he afterwards hanged, simply because he had no means of guarding them or of forwarding them to any place of confinement. He had no law for what he did, and it might be said that he had been guilty of a judicial murder. He (Mr. Harington) would be very sorry however to try this Officer for murder, or so to limit the law that, in the event of any Officer taking life under similar circumstances, he might be liable to be put on his trial for that offence. He therefore thought that it would be better that they should retain the punishment of death in the Act.

The Honorable Member for Bengal had not adduced any instance in which the Acts now proposed to be continued in force for a brief period longer had been abused since they were last renewed, and he (Mr. Harington) believed he might say that recourse to capital

punishment under those Acts was very rare.

MR. SCONCE'S Motion was put and negatived.

MR. SCONCE then moved that the following proviso be added to the Section, namely :—

"Provided that, in lieu of Section II Act XVI of 1857, the following Section be substituted (that is to say) 'The words heinous offence shall be deemed to include an attempt to murder, rape, wounding with intent to kill, dacoity, robbery, plundering with open violence, and arson, provided the same shall have been committed with the intention of assisting any persons who at the time of commission were or are waging war, or in arms against the State, or forwarding their designs.'"

The Motion was negatived, and the Section then passed.

MR. SCONCE moved that the following new Section be added to the Bill :—

"Nothing in the said Acts shall extend to the punishment of persons entitled to pardon under Her Majesty's Proclamation, published in the Calcutta Gazette Extraordinary, dated the 1st of November 1858."

MR. HARINGTON said, he considered the proposed Section to be quite unnecessary. If any person entitled to a pardon under Her Majesty's Proclamation was arrested and brought to trial, the proper and usual course would be for him to plead the pardon in bar of further proceedings.

MR. RICKETTS said that the Honorable Member for Bengal was still confounding offenders who had mutinied with those who had not.

MR. SCONCE said, the terms of the Proclamation were—

"To all others in arms against the Government, we hereby promise unconditionally pardon, amnesty, and oblivion of all offences against ourselves, our Crown, and dignity, on their return to their homes and peaceful pursuits."

Here manifestly all prior acts of mutiny and rebellion, up to the promulgation of the Proclamation, were fully condoned, and it seemed to him that, in renewing laws necessitated by the events of 1857 and created in that year, it was highly essential to limit the language of the new law by the conditions which the Amnesty necessarily imposed, and not to encourage local officers by the curt and silent terms of our law to prosecute offences that had been already pardoned.

If the Legislature could be supposed not to be cognizant of the Proclamation, the Bill would have been more or less justified. But as it was otherwise, they should prevent the possibility of any District Officer, under color of this Act, taking advantage of the ignorance or timidity of a prisoner and subjecting him unreservedly to a law passed before the proclamation of the Amnesty, as if the old and the new law could apply to the same crimes and the same criminals. He should therefore press his amendment.

MR. WILSON would appeal most respectfully to the Honorable Member for Bengal whether it would be wise to persevere in this amendment, and trusted that on consideration he would not object to withdraw it. If the amendment were put and negatived, it might create an impression abroad that a majority of the Legislative Council and the Government of India were disposed to contravene the benign proclamation of Her Majesty. Now he was quite aware that the Honorable Member did not wish to raise such an imputation. That the amendment itself was not needed to accomplish the object of the Honorable Member must be apparent upon three distinct grounds. In the first place, the law, which it was now sought to continue for another year as a temporary measure, had been in operation during the whole of the last year, contemporaneously with Her Majesty's proclamation, but no one ever imagined that the two were inconsistent with each other, nor had it ever been asserted that the one contravened the other. In the next place, if such a proviso were needful to save the proclamation under this particular law and against the punishments it inflicted, it was equally necessary as against the common criminal law, as the proclamation equally covered ordinary punishments for the offences which it condoned. And in the last place, if a person should by accident be tried for an offence which came within the proclamation, it might be pleaded in bar of the prosecution. He

(Mr. Wilson) trusted therefore, in order to avoid misconceptions on so delicate a point, that the Honorable Member would consent to withdraw his motion and not leave it on the records of the Council.

SIR CHARLES JACKSON said, he was disposed at first to support the amendment of the Honorable Member for Bengal; but the observation of the Honorable Member opposite (Mr. Harington) had sufficiently answered the objection, for there was certainly nothing in the Act to prevent a person pleading Her Majesty's pardon if he was entitled to it.

MR. SCONCE then, with the leave of the Council, withdrew his motion.

The Preamble and Title were passed as they stood; and the Council having resumed its sitting, the Bill was reported.

MR. HARINGTON moved that the Bill be read a third time and passed.

The motion was carried, and the Bill read a third time.

MR. HARINGTON moved that Mr. Ricketts be requested to take the Bill to the President in Council in order that it might be submitted to the Governor-General for his assent.

Agreed to.

TOLLS (CIRCULAR AND EASTERN CANALS.)

MR. SCONCE said, he had the honor of moving the first reading of a Bill "to amend and extend Act XXII of 1836 (relating to the levy of a Toll on boats, rafts, and floats passing through the Circular and Eastern Canals)." Hitherto two Canals connected Calcutta and the River Hooghly with the Sunderbunds, and by a previous Act Government was empowered to regulate the navigation and to levy Tolls not exceeding a certain amount. Recently a third cut or line had been excavated by Government and was about to be opened for traffic. This line joined the other lines. The proposal which he had to make was that, whereas the two older lines were subject to the provisions of Act XXII of 1836 with respect to the levy of Tolls and other matters, the third new line might in like manner be brought under the provisions of that law.

The Bill was read a first time.

MILITARY POLICE BATTALIONS.

MR. SCONCE said, the Bill which he now had the honor to propose was somewhat of a different character, and he must crave the indulgence of the Council in the consideration of the proposed Bill. It was a Bill "to provide for the good order and discipline of the Battalions of Military Police." So far that efficiency was secured by Military organization, and he could well understand that a person more especially conversant with the working of the Military Law would have been better capable of preparing the Bill than himself. Those Battalions both in Bengal and the North-Western Provinces had been in existence for a considerable period, and however effectively they had been commanded, the powers of Commanding Officers were not supported by the operation of a specific law. In some instances it was found necessary to allow Commanding Officers to exercise the powers of Magistrates. But necessarily these powers which were limited to cases that fell strictly within the definitions of the Criminal Law, were in fact ill calculated to regulate the better order and discipline of Police Battalions. Some legislation on the subject was therefore extremely urgent. Without pretending to say that the form in which the Bill was now framed was the best which could have been adopted, yet it was brought in to meet the urgency of the case, and it might be taken as a substratum for a more effective Law. The offences provided for were taken from the Articles of War for the Native Army. Some of the minor offences were omitted, and others had been thrown together into one Article. As the Honorable and gallant President was well aware, most of the earlier articles of Act XIX of 1847 were not applicable to the circumstances under which the Police Battalions would be ordinarily employed. The Articles referred to contemplated offences occurring in time of war, and it appeared unnecessary to retain in the present law the same system of punishment that might be necessary to enforce discipline in a regular army. The punishment of death, for example, might be awarded under the Articles of War

for a series of offences; but except in the case of mutiny, this punishment was not retained in the present Bill. Now, therefore, as under the old Articles, the sentence for mutiny might be death.

A more material change now proposed related to the tribunals for the trial of these offences. The authorities whom he had consulted did not altogether agree upon the mode of conducting them. Major Rattray, the Inspector of the Military Police Battalions in Bengal, was rather disposed to view with favor the system of assessors. On the other hand, Colonel Williams, the Commissioner of the Police Battalions entertained in the North-Western Provinces, and the Officers under him, were of opinion that it was unadvisable to continue to Native Officers the exercise of powers with which they were invested under the old Courts. He (Mr. Sconce) had preferred, therefore, on the whole, to dispense with the services of Native Officers or Native Assessors, and to vest the conduct of these trials in Commanding Officers alone who, while empowered to inflict certain punishments of their own authority, were required to refer sentences of a graver nature for the confirmation of the Inspector of Police Battalions, or Commissioner as he was designated in the North-Western Provinces.

With these remarks, he begged to propose the first reading of this Bill.

The Bill was read a first time.

The Council adjourned at ½ past 12 o'clock, on the Motion of Mr. Ricketts, to Saturday, the 17th Instant.

Saturday, December 17, 1859.

PRESENT:

The Honorable Lieut.-General Sir James Outram, Senior Member of the Council of the Governor-General, presiding.

Hon. H. Ricketts.
Hon. H. B. Harington.
P. W. LeGeyt, Esq.
H. Forbes, Esq.
Hon. Sir C. R. M. Jackson, and
A. Sconce, Esq.

LICENSING OF TRADES AND PROFESSIONS.

THE CLERK presented a Petition from Native Inhabitants of Bombay against the Bill "for the licensing of Trades and Professions."

MR. HARINGTON moved that the above Petition be printed.

Agreed to.

FOREIGNERS.

MR. HARINGTON presented the Report of the Select Committee on the Bill "to continue in force for a further period of two years Act XXXIII of 1857 (to make further provision relating to Foreigners)."

TRIALS BY SESSIONS JUDGES.

MR. HARINGTON presented the Report of the Select Committee on the Bill "to empower Sessions Judges to pass sentence in certain cases without reference to the Sudder Court."

CIVIL PROCEDURE.

MR. HARINGTON presented the Report of the Select Committee on the Bill "to amend Act VIII of 1859 (for simplifying the Procedure of the Courts of Civil Judicature not established by Royal Charter)."

FOREIGNERS.

MR HARINGTON moved, pursuant to notice, that the Standing Orders be suspended to enable him to pass through its remaining stages to-day the Bill to continue in force for the further period of two years, Act XXXIII of 1857, entitled an Act to make further provision relating to Foreigners. He said, the Bill for prolonging the operation of the Act in question was brought in on the 6th August last, and was read a second time without opposition on the 13th of that month. It was referred on the same day to a Select Committee, whose report from accidental causes had only just been presented. Meanwhile the Act, which it was proposed to continue in force, had expired, and it being very desirable, therefore, that the Bill should be proceeded with at once, instead of the usual interval being allowed to elapse between the presentation of the Report of the Select Committee and the resolution for going into Committee thereon, he hoped that the Council would not object to his

Motion. He might mention that no objection had been made to the Bill in any quarter, and that the Select Committee, to whom the Bill was referred, had not recommended any alteration in it beyond an addition, which they had proposed for the purpose of reviving as well as of continuing the operation of Act XXXIII of 1857 for two years from the 5th December 1857, and which had been rendered necessary by the expiration of the Acton thatdate.

MR. FORBES seconded the Motion, which was put and carried.

MR. HARINGTON then moved that the Council resolve itself into a Committee on the Bill, and that the Committee be instructed to consider the Bill in the amended form in which the Select Committee had recommended that it should be passed.

Agreed to.

The Bill passed through Committee without amendment, and, the Council having resumed its sitting, was reported.

MR. HARINGTON moved that the Bill be read a third time and passed.

The Motion was carried, and the Bill read a third time.

MR. HARINGTON moved that Mr. Ricketts be requested to take the Bill to the President in Council in order that it might be submitted to the Governor-General for his assent.

Agreed to.

TRIALS BY SESSIONS JUDGES.

MR. HARINGTON moved that the Standing Orders be suspended to enable him to carry through its remaining stages on that day the Bill "to empower Sessions Judges to pass sentence in certain cases without reference to the Sudder Court." He said, his reason for making this Motion was that it was very desirable that the Bill, to which the Motion referred, should come into operation, if possible, from the 1st January next. The Council were aware that the two Sudder Courts of the Bengal Presidency, to which alone the Bill applied, were much oppressed with work, particularly the Sudder Court at Calcutta, and this was one of the measures intended for the relief of those Courts. The Bill had been before the public for six months, the second reading having taken place on the 18th June last, and it had met with no opposition from any quarter. No communication had been received from the Sudder Court at Calcutta on the subject of the Bill, and the only suggestion which had proceeded from the Sudder Court at Agra in respect to it was that the present opportunity should be taken to extend the powers of the Sessions Judges by allowing them to pass sentence of imprisonment for ten years in cases in which they were limited by the existing law to seven years. It appeared, however, to the Select Committee on the Bill, that the suggestion of the Agra Sudder Court could be more properly considered in connection with the Criminal Procedure Bill, and that it was not advisable, at the present stage of the Bill before the Council, to propose the introduction into it of so important an amendment of the existing law. With this explanation he trusted that the Council would accede to his Motion. He would only add that the Select Committee had not considered it necessary to propose any alteration in the Bill as read a second time.

MR. FORBES seconded the Motion, which was put and carried.

MR. HARINGTON then moved that the Council resolve itself into a Committee on the Bill.

Agreed to.

The Bill passed through Committee without amendment, and, the Council having resumed its sitting, was reported.

MR. HARINGTON moved that the Bill be read a third time and passed.

The Motion was carried, and the Bill read a third time.

MR. HARINGTON moved that Mr. Ricketts be requested to take the Bill to the President in Council, in order that it might be submitted to the Governor-General for his assent.

Agreed to.

TOLLS (CIRCULAR AND EASTERN CANALS).

MR. SCONCE moved the second reading of the Bill "to amend and extend Act XXII of 1836 (relating to the levy of a Toll on boats, rafts, and floats passing through the Circular and Eastern Canals)."

The Motion was carried, and the Bill read a second time.

NOTICES OF MOTION.

MR. HARINGTON gave notice that he would, on Saturday next, move the first reading of the following Bills—

A Bill to empower the Governor-General in Council to raise the duty on Salt imported into the North-Western Provinces of the Presidency of Bengal.

A Bill to repeal certain Laws relating to the jurisdiction of the Zillah Court of Furruckabad, and

A Bill to provide for the execution of Process within the precincts of the residence of His Majesty the King of Oude.

MR. HARINGTON also gave notice that he would, on the same day, move for a Committee of the whole Council on the Bill "to amend Act VIII of 1859 (for simplifying the Procedure of the Courts of Civil Judicature not established by Royal Charter)."

LAND FOR PUBLIC PURPOSES.

MR. LEGEYT moved that a correspondence with the Bombay Government be laid upon the table and referred to the Select Committee on the Bill "to amend Act VI of 1857 (for the acquisition of Land for Public Purposes)."

Agreed to.

REPEAL OF REGULATIONS AND ACTS.

MR. LEGEYT moved that a communication received by him from the Bombay Government be laid upon the table, and referred to the Select Committee on the Bill "to repeal certain Regulations and Acts relating to the Procedure of the Courts of Civil Judicature not established by Royal Charter."

Agreed to.

WATER SUPPLY (KURRACHEE).

MR. LEGEYT moved that a communication received by him from the Bombay Government be laid upon the table and referred to the Select Committee on the Bill "to provide for better supplying with water the Town and Suburbs of Kurrachee."

Agreed to.

POLICE (PRESIDENCY TOWNS AND STRAITS SETTLEMENT).

MR. LEGEYT moved that a communication received by him from the Bombay Government be laid upon the table and referred to the Select Committee on the Bill "to amend Act XIII of 1856 (for regulating the Police of the Towns of Calcutta, Madras, and Bombay, and the several Stations of the Settlement of Prince of Wales' Island, Singapore, and Malacca)."

Agreed to.

LICENSING OF TRADES AND PROFESSIONS.

MR. LEGEYT moved that a communication received by him from the Bombay Government be laid upon the table and referred to the Select Committee on the Bill "for the licensing of Trades and Professions."

Agreed to.

STAMP DUTIES.

MR. LEGEYT moved that two communications received by him from the Bombay Government be laid upon the table and referred to the Select Committee on the Bill "to consolidate and amend the law relating to Stamp Duties."

Agreed to.

EMIGRATION (MAURITIUS, &c.)

MR. LEGEYT moved that a communication received by him from the Bombay Government be laid upon the table and referred to the Select Committee on the Bill "to amend the law relating to the Emigration of Native Inhabitants of India to the Island of Mauritius and other places."

Agreed to.

NOTICES OF MOTION.

MR. LEGEYT gave notice that he would, on Saturday next, move the first reading of a Bill for the levy of Port-dues in the Ports of the Konkan Division of the Presidency of Bombay.

MR. SCONCE gave notice that he would, on the same day, move the second reading of the Bill "to provide for the good order and discipline of the Battalions of Military Police."

TOLLS (CIRCULAR AND EASTERN CANALS).

MR. SCONCE moved that the Bill "to amend and extend Act XXII of 1836 (relating to the levy of a Toll on boats, rafts, and floats passing through the Circular and Eastern Canals) be referred to a Select Committee consisting of Mr. LeGeyt, Mr. Forbes, and the Mover.

Agreed to.

EUROPEAN PRISONERS.

MR. LEGEYT gave notice that he would, on Saturday next, move the first reading of a Bill for increasing the diet money for Europeans imprisoned for debt.

The Council adjourned.

Saturday, the 24th December 1859.

PRESENT:

The Hon'ble H. Ricketts, Senior Member of the Council of the Governor-General, presiding.

Hon'ble Sir H. B. E. Frere.	H. Forbes, Esq.
P. W. LeGeyt, Esq.	Hon'ble Sir C. R. M. Jackson, and
H. B. Harington, Esq.	A. Sconce, Esq.

NATIVE PASSENGER VESSELS (BAY OF BENGAL); ARMS AND AMMUNITION; ARMY AND STATE OFFENCES.

THE PRESIDENT read Messages informing the Legislative Council that the Governor-General had assented to the Bill "to prevent the overcrowding of vessels carrying Native Passengers in the Bay of Bengal," the Bill "to continue in force for a further period Act XXVIII of 1857," and the Bill "to continue in force for a further period Acts XIV of 1857, XVI of 1857, and XVII of 1857."

CIVIL PROCEDURE.

THE CLERK presented to the Council a Petition from the British Indian Association concerning the Bill "to amend Act VIII of 1859 (for simplifying the Procedure of the Courts of Civil Judicature not established by Royal Charter)."

MR. HARINGTON moved that the above Petition be printed.

Agreed to.

THE CLERK reported to the Council that he had received from the Home Department communications from the Governments of Bengal and the North-Western Provinces connected with Act VIII of 1859 (for simplifying the Procedure of the Courts of Civil Judicature not established by Royal Charter).

ELECTRIC TELEGRAPHS.

THE CLERK also reported to the Council that he had received from the Home Department a communication from the Governor of the Straits Settlement suggesting, with reference to the line of Telegraph which is being laid down by the Dutch Government between Batavia and Singapore, that due protection under law should be granted to any line of Telegraph laid within British Territory by a Foreign power.

MR. LEGEYT moved that the above communication be printed.

Agreed to.

MEERAS LANDS.

MR. LEGEYT presented the Report of the Select Committee on the Bill "to limit the period within which a Meerasdar may assert his claim to lands which he has abandoned, or for which he may have failed to pay assessment."

PASSENGERS.

MR. LEGEYT presented the Report of the Select Committee on the Bill "to amend the law relating to the carriage of Passengers by Sea."

JAMSETJEE JEJEEBHOY BARONETCY.

MR. LEGEYT presented the Report of the Select Committee on the Bill "for settling Promissory Notes of the Government of India producing an annual income of one lac of Rupees and a Mansion house and hereditaments called Mazagon Castle in the Island of Bombay, late the property of Sir Jamsetjee Jejeebhoy, Baronet, deceas

ed, so as to accompany and support the title and dignity of a Baronet lately conferred on him and the heirs male of his body, by Her present Majesty Queen Victoria, and for other purposes connected therewith."

JOINT STOCK BANKING COMPANIES, LIMITED.

MR. SCONCE presented the Report of the Select Committee on the Bill "to enable Joint Stock Banking Companies to be formed on the principle of limited liability."

IPORT DUTY ON SALT (N. W. P.)

MR. HARINGTON moved the first ading of a Bill "to empower the overnor-General in Council to raise e Duty on Salt imported into the orth-Western Provinces of the Presiency of Bengal." He said, in the remarks with which he prefaced the introduction of the Bill, brought in by him in the month of August last, for licensing Trades and Professions as a means of augmenting the general Revenues of the country, he alluded, amongst other sources from which additional Revenue might be obtained, to the possibility of increasing the Duty upon Salt. As regarded the Presidency of Bengal, he observed that "the Government of India had already power by law to raise the Duty paid by Salt in the Lower Provinces of Bengal to Rupees 3-4 per maund—the Duty now paid was Rupees 2-8 per maund—that whether any increase should take place, and if so, what should be its extent, were questions which would be considered on the receipt of a report which had been called for from the Government of Bengal—that in the North-Western Provinces a Duty of Rupees 2 per maund was levied on all Salt crossing the frontier, and a further Duty of 8 Annas per maund on any Salt which might pass Allahabad—that a uniform Duty of Rupees 2-8 per maund had been proposed on all Salt crossing the frontier, the extra Duty now taken at Allahabad being abolished—that some Officers had, indeed, proposed that the Duty should be increased to Rupees 3 per maund—that the question of increasing the Duty on Salt in the North-Western Provinces had to be considered in connection with Oude, which was a large Salt-producing country, and that reports had been called for from both the Chief Commissioner and the Lieutenant-Governor of the North-Western Provinces—that their answers might possibly show that it was not expedient to make any alteration in the rates of Duty now levied in the North-Western Provinces; but this was a point upon which he (Mr. Harington) purposely abstained from giving any opinion at present, because he felt that he was not in a position to do so with satisfaction to himself."

The result of the enquiries instituted by the Governor-General in Council, through the local Governments of the Lower and North-Western Provinces of Bengal, had been to satisfy His Excellency that the Duty on Salt in both Divisions of the Presidency would admit of being increased to the extent of 8 Annas a maund, that is to say, that in the Lower Provinces the Duty might be raised from 2 Rupees 8 annas to 3 Rupees per maund, and in the Upper Provinces from 2 Rupees to 2 Rupees 8 annas per maund. It would still be necessary to retain the additional or differential Duty which was now paid by Salt from the North-West on passing Allahabad, as below that place the North-Western Salt came into competition with the Salt supplied from the coast; and where that was the case, it was only fair and proper that, in point of taxation, both Salts should be placed on a level.

As had been stated in the remarks to which he had referred, it was quite competent to the Government of India, without any new law, to raise the Duty upon Salt in the Lower Provinces of Bengal to 3 Rupees 4 Annas per maund, which would more than cover the increase now proposed in respect to those Provinces, and accordingly, as Honorable Members would have observed, an Official Gazette had just been issued, which declared that from and after the date thereof the rate of Duty to be charged on Salt imported by sea into any part of the Presidency of Fort William in Bengal would be 3 Rupees upon every maund of 3200 tolas. But the duty on Salt imported into the North-Western Provinces from across the

frontier being fixed by Section II Act XIV of 1843 at 2 Rupees per maund, a new law was required to raise the duty on Salt so imported to 2 Rupees 8 Annas per maund, and the Bill of which he was now to move the first reading had been framed with a view to give the Government this power. Instead, however, of limiting the power of Government to raise the duty upon Salt imported into the North-Western Provinces to 2 Rupees 8 Annas per maund which was all that was now intended or desired, it was proposed to extend the limit to 3 Rupees. This would still be less than the sum to which the Government of India was competent, under the existing law, to raise the duty upon Salt in the Lower Provinces of Bengal, and it was hoped that this proposed extension of the discretionary power to be vested in the Government of India in respect to Salt imported into the North-Western Provinces, so as to place it nearly upon a footing with the power which the Government of India already possessed as regarded the Salt of the Lower Provinces of Bengal, would not be objected to by the Council.

Before determining upon increasing the duty upon Salt in Bengal to the extent which he had mentioned, the probable effect of the increase upon the public Revenue and upon the health and comfort of the people at large and particularly the poorer classes had, he need scarcely say, been carefully and fully considered by the Government of India. If the effect of the proposed increase should be to diminish the consumption of Salt to any great extent so that the higher duty on the smaller quantity consumed would produce little, if any, more revenue than had hitherto been obtained from the lower rate on the larger consumption, the increase would, obviously, be highly impolitic and inexpedient, but after making full enquiry, the Government saw no reason to anticipate that the higher rate of duty would check consumption in any material degree, and it seemed to be the very general belief amongst those who might be regarded as competent judges, that the increase which might be expected to take place in the price of Salt in consequence of the increase in the rate of duty, would be so very trifling, that it would scarcely be felt even by the laboring population, who could the least afford any extra charge on account of the articles of food consumed by them. The condition of this class was daily undergoing considerable improvement from the higher price that they could now command for their labor. It was well known that the value of labor was rapidly increasing throughout the country from the large public and private works which were being carried on and from other causes. With regard to the extent to which the duty upon Salt pressed upon the people, he would with the permission of the Council, read an extract from a despatch of late Governor General, the Most N the Marquis of Dalhousie. Writing Governor of Bengal, His Lordship served—

"Notwithstanding the general asserti made in Parliament and elsewhere of the ba ful effects of the Salt tax on the condition the people, there is no reason whatever suppose that such assertions are founded fact, or that the very poorest classes suff any appreciable degree of pressure or inco venience from this their only contribution t the public revenue of the country. Assuming the population of the Provinces supplied with Salt subject to this tax at 50 millions, th average annual payment per capnt, on th supposition that all consume alike, is only 5¾ annas, while, on the same supposition, each individual has 5¾ seers of Salt for his yearly consumption. If the population be less than 50 millions, the average consumption is o course greater. And as Salt in Bengal is not used for any but alimentary purposes, thi amount of consumption is not consistent with the belief that the economical effects of the tax are more injurious to the people, than those of any other tax of similar amount would be."

Mr. George Plowden, again, in his able and elaborate Report upon the duty on Salt said:—

"It has been argued that it is grievous to tax Salt in India because Salt is the only condiment an Indian laborer consumes with his food, which is of such a nature that without Salt it would be unbearably insipid. But this is a mistake of fact. Dr. Bedford's paper on the income, expenditure, and food of the poor classes in Bengal shows that, dear as Salt is in Bengal, usually as much is spent by these very classes upon pepper and other untaxed spices (exclusive of the very important item of oil also untaxed) as upon Salt, and sometimes more. The daily food of the cooly or common working man in Bauleah is shown to consist of dhal, fish, meats, spice, green vegetables, milk, and oil, besides rice and Salt. This paper also

shows that usually half as much is spent by the poorer classes on tobacco (also untaxed) as on Salt. The Indian laborer then, when the facts of his case are ascertained, is found to be much more fortunate in the fiscal system under which he lives than the English laborer. I am not aware what condiment, except Salt, the latter can enjoy untaxed. In tobacco alone, I imagine, many laborers in England contribute more to the revenue of their country in proportion to their income than the Indian laborer does in Salt; and those English laborers who may consume occasionally sugar, coffee, tea, malt liquor, pepper, or other spices, and the like small luxuries corresponding with the spice, milk or dhye, oil, and tobacco of the Bengalee, pay very heavy taxes to which there is nothing corresponding in the Indian fiscal system as it affects any class of people. Mr. T. L. Peacock, in his evidence before the Select Committee of 1836, says—'I think the English laborer's taxes bear a greater proportion to his wages' (than the Salt Tax paid by the Bengal laborer bears to his wages); and speaking of the English system of taxation, he says—'almost all the taxes that fall upon the (English) laborer are out of the necessaries of life; many taxes have been taken off of late years; the taxes are taken off soap, leather, and candles; formerly there was scarcely any thing that was not the subject of taxation to the poor man in England.' I have not observed that any witness in 1836 or on any other occasion has controverted this statement."

And further on, in the same Report, Mr. Plowden observed, in reference to the North-Western Provinces—

"The cost of an adequate supply of salt cannot be regarded as burdensome to the laborer in the North-Western Provinces. Much less can it be said that an adequate supply of good wholesome salt is beyond his reach."

This opinion was confirmed in a letter received by him (Mr. Harington) not long ago from the Commissioner of Customs for the North-Western Provinces who wrote—

"If the tax on salt is raised to 3 Rupees per maund in the North-Western Provinces, it will not be felt. At the above rate of duty, a cooly receiving 3 Rupees per mensem, and consuming 6 seers of salt per annum (the estimated amount), his contribution towards the expense of the State would be 6 annas 2 pies, the 80th part of his annual earnings, or about 1·25 per cent."

At 2 Rupees 8 annas per maund, the percentage would of course be less.

"The production price of the salt (the Commissioner went on to say) with all the expenses attending the manufacture and transportation of the article to the markets where it is sold, which the cooly would have to pay whether there was a duty or not, must be deducted from the amount of actual taxation. So little is the salt tax felt that not one man in a hundred knows that he is subjected to it. The poorer people in purchasing atta or flour have always a portion of salt with a little pepper given with it, which is charged for the price of the atta."

It was calculated that the increase in the rate of duty upon Salt in the Presidency of Bengal, now proposed, would yield an additional Revenue of between forty and fifty lacs of Rupees, or nearly half a million a year, and, as had been said, it was hoped that the increase would be obtained without any very sensible pressure upon the consumers of the article from which it was derived. The necessity for this increase, or for the measure by which it was expected to be produced, was to be found in the financial difficulties with which the Government were still contending. With the extent of those difficulties, as well as with the measures in progress to meet them, the Council had already been made acquainted, and he did not know that he could advantageously or usefully add any thing, at present, to the information given to the Council on both points on previous occasions. He would not therefore occupy the time of the Council by repeating the very full statement in respect to the finances, made in this chamber in the early part of the year by His Excellency the Governor General at the time that His Lordship introduced the Bill to alter the duties of Customs on goods imported or exported by sea, or what was said in the debates which took place on the motions for the first and second reading of the Bill for licensing Trades and Professions, though he might mention that there had been no abatement of the anxiety felt by the Government of India to reduce the expenditure in every branch of the public service to the utmost possible extent consistently with efficiency, and that the measures which had been adopted with that view had already produced a very considerable saving.

As regarded Madras and Bombay, a slight increase had lately been made in the duty on Salt in both those Presidencies. This increase had taken

place under the orders of the Government of India in accordance with instructions from home, and not, as had been erroneouly stated by him (Mr. Harington) on a former occasion, by recourse to fresh legislation, which was not necessary. But even with this increase, the duty paid by Salt in Madras and Bombay would continue very much less than what was proposed for Bengal, and the people of Bengal might not unreasonably complain of the distinction, and, as respected the duty under consideration, might not unfairly claim equality of taxation in the three Presidencies. On this point he might observe that the Government of India had by no means conceded that the present duty on Salt in Madras and Bombay was nearly at a maximum. In the case of both Presidencies the Government of India had, for the present, yielded to the special considerations which had been pressed upon it by the local Governments. In urging these considerations, in so far as Bombay was concerned, the Government of that Presidency had frankly and fairly admitted that hereafter a further advance in the rate of duty might be made if the late increase, which was to the extent of 4 annas per maund, was found not to have produced any ill effect, and as regarded Madras, it was hoped that the improvements, now in progress in that Presidency under its present able and energetic Governor, and which embraced a reform of the Police, the settlement of Inams, and a reduction of the assessment upon land, would produce an amount of prosperity which would enable the people of Madras, at no distant date, to bear a duty upon Salt more nearly approaching the rate imposed upon the people of Northern India.

It only remained for him to say that it being obviously most undesirable that there should be any interval between the announcement to the public of the intention of the Government to raise the duty upon Salt in the North-Western Provinces to 2 Rupees 8 annas per maund and the carrying out of that intention, the higher duty had been ordered to be levied from this date, and, as was usually done in the like cases, a Section had been added to the Bill, which it was hoped would be assented to by the Council, for the purpose of indemnifying all persons who might be concerned in levying the higher rate of duty previously to the sanction of the Legislature being given to the same.

The Motion was carried, and the Bill read a first time.

ZILLAH COURT OF FURRUCKABAD.

MR. HARINGTON moved the first reading of a Bill to "repeal certain Laws relating to the jurisdiction of the Zillah Court of Furruckabad." He said that, by the first article of a treaty enterred into in the year 1802 with the Nawab of Furruckabad, after the cession of that district by the Nawab Wuzeer to the Honorable the East India Company, it was stipulated that "the authority of the Court of Adawlut should not extend to the person of the Nawab; but as his connexions and dependants were undefined, and it was the object of the British Government to introduce a fair and impartial administration of justice throughont the Province of Furruckabad, it was agreed that whatever complaint might be preferred against any of the Nawab's dependants, should in the first instance be referred to the Nawab; and in the event of the complainant not receiving any speedy justice, or being dissatisfied with the Nawab's decision, the complaint should be decided in the Adawlut."

This stipulation was embodied in Regulation II. 1803 of the Bengal Code and would be found in Section VIII of that enactment. Subsequently Act XII of 1836 was passed, which declared that "from the 1st day of June 1836, if the holder of a decree passed by the Nawab of Furruckabad under the provisions of Section VIII of Regulation II. 1803, shall be unable to obtain execution of the said decree by the Nawab for a period of six weeks (which period of six weeks shall be calculated from the said first day of June, if the decree were passed before the said first day of June, and from the time of passing the decree, if the decree were passed on or after the said first day of June), the said holder shall be

at liberty to sue out execution of the said decree in the Zillah Court of Furruckabad; and the Judge of that Court, on application made to that effect, shall execute the decree in the same manner in which a decree of the said Zillah Court is executed."

This law, as well as the law of 1803, was still in force, but the conduct of the Nawab of Furruckabad during the temporary cessation of British authority in that district in the year before last, which had rendered his name infamous, having led to the banishment of the Nawab from the British Dominions in India, to the confiscation of his property and to the extinction of his title, it was not now possible, nor, if it were possible, would it be necessary or proper to continue to the followers and dependants of the Nawab the privilege of having complaints, when made against them, heard by him, which was conferred upon the followers of the Nawab by the terms of the treaty of 1802; and there being no longer any reason for placing those persons on a different footing in matters connected with the administration of Civil Justice in the district from the other residents thereof, the present Bill was introduced with the view of doing away with the distinctions in favor of the Nawab and his dependants which were contained in the existing Regulations, by repealing the same.

The Bill was read a first time.

KING OF OUDE.

MR. HARINGTON moved the first reading of a Bill "to provide for the execution of Process within the precincts of the residence of His Majesty the King of Oude." He said, the Council was probably aware that His Majesty the King of Oude, who, notwithstanding the annexation of his kingdom to the British Dominions in India, retained his title, had lately taken up his residence at a place in the neighborhood of Calcutta, where His Majesty had become the proprietor by purchase of several houses with the grounds attached thereto, in which he and his family with their connexions and followers were at present living, and the object of the Bill, of which he was now to move the first reading, was to make the same provision for the execution of legal processes within the precincts of His Majesty's residence which was made by law in the case of the Nawab Nazim of Bengal at Moorshedabad. This was considered desirable by the Government and it was hoped that the measure would materially facilitate the execution of legal processes within the precincts of the premises occupied by the King of Oude without interfering improperly or inconveniently with the ordinary jurisdiction of the local Civil and Criminal Courts, to which His Majesty and his followers, by taking up their abode within the territorial limits of the same, had rendered themselves amenable. The Bill related simply to the execution of the processes of those Courts, from which it did not propose to exempt any of the persons to whom it would apply, and in framing the Bill the wording of the corresponding enactment for regulating the execution of legal processes within the precincts of the palace of the Nawab Nazim of Bengal at Moorshedabad, had been closely followed.

The Bill was read a first time.

KONKAN PORT-DUES.

MR. LEGEYT postponed the Motion (which stood in the Orders of the Day) for the first reading of a Bill for the levy of Port-dues in the Ports of the Konkan Division of the Presidency of Bombay.

EUROPEAN PRISONERS.

MR. LEGEYT also postponed the Motion (which stood in the Orders of the Day) for the first reading of a Bill to make further provision for the subsistence of Europeans imprisoned under Civil Process.

MILITARY POLICE BATTALIONS.

MR. SCONCE moved that the Bill "to provide for the good order and discipline of the Battalions of Military Police" be read a second time.

The Motion was carried, and the Bill read a second time.

CIVIL PROCEDURE.

MR. HARINGTON postponed the Motion (which stood in the Orders of

the Day) for a Committee of the whole Council on the Bill "to amend Act VIII of 1859 (for simplifying the Procedure of the Courts of Civil Judicature not established by Royal Charter)."

MILITARY POLICE BATTALIONS.

MR. SCONCE moved that the Bill "to provide for the good order and discipline of the Battalions of Military Police" be referred to a Select Committee consisting of Sir James Outram, Mr. Harington, Sir Charles Jackson, and the Mover.

Agreed to.

IMPORT DUTY ON SALT (N. W. P.)

MR. HARINGTON gave notice that he would, on Saturday next, move the second reading of the Bill "to empower the Governor-General in Council to raise the Duty on Salt imported into the North-Western Provinces of the Presidency of Bengal," and, in the event of that Motion being carried, the suspension of the Standing Orders with a view to the Bill being passed through its remaining stages forthwith.

DISSOLUTION OF MARRIAGES BY CHRISTIAN CONVERTS.

SIR CHARLES JACKSON gave notice that he would on the same day move the first reading of a Bill to provide for the dissolution of certain Marriages entered into by Christian Converts before their conversion.

ZILLAH COURT OF FURRUCKABAD.

MR. HARINGTON give notice that he would on the same day move the second reading of the Bill "to repeal certain Laws relating to the jurisdiction of the Zillah Court of Furruckabad."

KING OF OUDE.

MR. HARINGTON gave notice that he would on the same day move the second reading of the Bill "to provide for the execution of process within the precincts of the residence of His Majesty the King of Oude."

WATER-SUPPLY (KURRACHEE.)

MR. LEGEYT moved that Sir Bartle Frere be added to the Select Committee on the Bill "to provide for better supplying with water the Town and Suburbs of Kurrachee."

Agreed to.

PENAL CODE.

MR. LEGEYT moved that a communication received by him from the Bombay Government respecting the power of Zillah Judges to award sentences of solitary confinement, be laid upon the table and referred to the Select Committee on "The Indian Penal Code."

Agreed to.

The Council adjourned.

Saturday, December 31, 1859.

PRESENT:

The Hon'ble Sir Barnes Peacock, *Vice-President*, in the Chair.

Hon. Lieut.-Genl. Sir J. Outram,	H. B. Harington, Esq.,
Hon. H. Ricketts,	H. Forbes, Esq.,
Hon. Sir H. B. E. Frere,	Hon. Sir C. R. M. Jackson,
P. W. LeGeyt, Esq.,	and A. Sconce, Esq.

DISSOLUTION OF MARRIAGES BY CHRISTIAN CONVERTS.

SIR CHARLES JACKSON begg leave to move the the first reading a Bill "to provide for the dissolut of certain Marriages entered into Christian Converts before their conversion." The object of the Bill was to remove certain disabilities affecting Native Christian Converts. Owing to the custom of early marriages in this country, most Converts were married at the time of their conversion. The consequence of a Mahomedan or Hindoo becoming Christian was simply this that the Hindoo or Mahomedan who remained true to his own faith was considered freed from the marriage tie, the marriage itself being dissolved; while on the other hand, according to Christian doctrine, the Convert was

bound by his marriage before conversion and was not able to re-marry. If it were not an Hibernian form of expression, he would describe his position as that of a married man without a wife. Such a state of things produced most serious consequences. It either led to concubinage amongst the Converts, or else to irregular marriages which gave neither a legal or religious sanction to the subsequent connection. A short statement of how matters stood, would, he thought, satisfy the Council that legislation on this subject ought not to be delayed. There were some Missionaries who treated these Native marriages as idle ceremonies, and did not hesitate to re-marry their Converts. In the Tinnevelly Missions it appeared that a distinction was drawn between marriages contracted between children and not afterwards followed up by cohabitation at maturer years, and marriages which were afterwards followed up by cohabitation. If children became converts they were not allowed to wear the symbols of marriage in the schools, and were taught that they were idle ceremonies, and when they attained maturity the Missionaries did not hesitate to re-marry them, and it was only when the marriage was followed by subsequent cohabitation that the Converts were prevented from marrying again. He (Sir Charles Jackson) did not see the force of this distinction. The validity of the Hindoo marriage must be decided by the Hindoo law, and according to that law, the first marriage in childhood is the real marriage and the child-wife becomes a widow even if her husband dies before the consummation of the marriage. These confused views on so important a subject as the law of marriage—a subject which affected so deeply the morality and the property of the Native Christian community—would produce still greater mischief and confusion by and bye, when the number of Native Christians increased. Besides, if a Convert were to re-marry, he would, according to an opinion given by Sir James Colvile when Advocate General, render himself liable to an indictment for bigamy under Act 9 Geo. IV. c. 74, s. 70. He had not the Statute before him, but the Clause contained provision to the effect that any person "professing the Christian religion," being married, should marry during the life of the former husband or wife, should be guilty of felony and liable to transportation for seven years, or to imprisonment for two years. He (Sir Charles Jackson) would express no opinion upon the point, but it might be that a Judge would be astute to see whether the Native Convert in such a case, though within the letter, was within the meaning of the Act. Be this however as it might, this state of the law is another reason why the present state of things should not be allowed to continue.

It might be said by some that this was a case for the legislation of the Imperial Parliament. He certainly thought that in cases affecting Europeans it is very desirable that the marriage law should be uniform, and that uniformity would best be secured by leaving questions relating to the marriage law of Europeans to the Imperial Legislature. But he did not think that this held good with respect to the Native Christian community. He very much doubted whether Parliament would ever undertake to legislate for them, and he felt quite sure that the consequences would be most disastrous if they were ever induced to make the attempt.

This subject had attracted the attention of the present Diocesan shortly after his arrival in this country, and he had asked him (Sir Charles Jackson) to obtain the assistance of that Council in order to remedy the evil. He (Sir Charles Jackson) had since then communicated with the Bishop and also with a Committee of Clergymen who had been appointed to confer with him on the subject, and the enactment which he now proposed met generally with their consent.

Before going farther, he wished to guard himself against any misconstruction. This Bill would not in any way affect either the Mahomedan or Hindoo party to the marriage who remained true to their original faith. According to the principles of the law to which they still adhered, the marriage was dissolved already, and it ought to be, and he believed it was, a matter of indifference to them whether the Convert did or did not marry again. The Bill only proposed to do that for

the Convert which the Mahomedan and Hindoo law had already done for the other party to the marriage contract. He thought however that as the Mahomedan or Hindoo party to the marriage contract did not in fact want this Bill, they might reasonably object to pay any of the expenses of the proceedings contemplated by this measure, and he had therefore inserted a Clause in the Bill, which expressly provided that the costs of all proceedings taken under the Act should be paid by the Convert.

In considering the question, he (Sir Charles Jackson) had looked round to see what was done in former times, when Christianity and Heathenism were side by side in Europe; but he was sorry to say there was little to be found. The law books of our own country were quite silent on the subject. There was, however, a case cited in Pothier which was in point. That was the case of a converted Jew, who in 1754, after his conversion, required his wife to return to cohabitation with him, but she refused. The Jew, thereupon, appealed to a tribunal in Strasbourg, and that tribunal granted him a divorce, with a declaration that he was at liberty to marry again. Four years afterwards, in 1758, he entered into an engagement to marry a young lady of Soissons, and all went merrily as a marriage bell till the parties applied to the Curé who refused to marry them. The matter was then referred to the Courts and the case was ultimately appealed to the Parliament of Paris who decided that the Curé was right and the parties could not be married. This was the only legal authority which was to be found on the subject, but he found it stated in the opinion of Mr. Colvile, when Advocate General, to which he had already alluded, that the question had been agitated before the Council of Trent who did not appear to have arrived at any decision respecting it.

The Council would not expect him to go into the religious part of the question. That was not the time or place for such a discussion, and he did not feel himself qualified to discuss it. He would just remark, however, that he had seen a large mass of papers, from which it appeared that the whole controversy turned upon the 14th and 15th verses of the 7th Chapter of 1st Corinthians.

"If any brother hath a wife that believeth not, and she be pleased to dwell with him, let him not put her away. And the woman which hath an husband that believeth not, and if he be pleased to dwell with her, let her not leave him. But if the unbelieving depart, let him depart. A brother or a sister is not under bondage in such cases."

And he (Sir Charles Jackson) thought he might add that the great majority of the Clergy deemed this a sufficient authority for the present measure.

With these few observations, he begged to introduce the Bill to the Council. It was, he thought, characterised by two distinct features.

1*st.*—That there was the greatest time given to the parties for deliberation, particularly when there were any children of the marriage.

2*nd.*—That great care had been taken to throw all the burden of the proceedings taken under the Act upon the Convert.

He would not go at length into the provisions of the Bill, but he would simply state that it provided that, when a Mahomedan or Hindoo husband or wife refused to cohabit with a Christian Convert, the latter was allowed to apply by petition to the Zillah Judge, who would issue an order compelling the appearance of the party refusing to cohabit, for the purpose of being interrogated whether he or she refused to cohabit with the Convert. If the party, on being interrogated by the Judge, answered in the negative, the Judge was required to postpone making any final order for the dissolution of the marriage for a period of four years if there were any children, or of two years if there were none. At the end of the period ordered, the party would be again brought up and interrogated by the Judge, and if he or she still refused to cohabit with the Convert, the Judge was empowered to declare the marriage dissolved.

The Convert would be obliged (if the Zillah Judge should think fit so to order) to maintain his wife during the period which might intervene between the first and second interrogation, and the Bill expressly saved the rights of children born of the marriage which

was dissolved. These were the main provisions of the present Bill, and he would only say in conclusion that, if the Council should allow it to pass the second reading and be referred to a Select Committee, he should be very glad to receive any suggestions on the subject.

MR. SCONCE seconded the Motion, which was put and carried, and the Bill read a first time.

MARRIAGES (CHURCH OF SCOTLAND.)

MR. SCONCE said, the Bill of which he was about to propose the first reading, did not embody any new principle of law, but rather was intended simply to correct what appeared to him to be a defect in the present law relating to the celebration of Marriages by ordained Ministers of the Church of Scotland. The present law by which Marriages were solemnized by Ministers of that Church was enacted in England in 1818, and it might be readily understood that the general principles of legislation which were then adopted towards Europeans were much more restrictive than those of the present day. In the Act to which he had alluded, it was provided that Marriages "shall be had and solemnized within the British Territories in India by ordained Ministers of the Church of Scotland as by law established." Thus it was already recognized that Ministers of the Church of Scotland were competent to solemnize Marriages in this country; but the following words were added "and appointed by the United Company of Merchants of England trading to the East Indies, to officiate as Chaplains within the said territories." The purpose of the present Bill was simply to withdraw the restriction contained in those latter words, so that Marriages might be solemnized by any ordained Minister of the Church of Scotland in this country, whether Chaplains upon the Establishment or not. More recently, Chaplains or rather Ministers had been introduced into India on a footing not contemplated by the Legislature when the Act of 1818 was passed. Lately several Chaplains had been appointed by the Secretary at War to the Highland Regiments in this country; and it was apprehended that, under the strict terms of the law, those Chaplains, though ordained Ministers of the Church, were not competent to marry soldiers attached to their Regiments. He did not apprehend that any objection could arise to effacing words from the Act which afforded no greater security than the ordination of the Church gave. With these remarks, he begged to move the first reading of a Bill "relating to the celebration of Marriages in India by ordained Ministers of the Church of Scotland."

The Bill was read a first time.

IMPORT DUTY ON SALT (N. W. P.)

MR. HARINGTON moved the second reading of the Bill "to empower the Governor-General in Council to raise the duty on Salt imported into the North-Western Provinces of the Presidency of Bengal."

The Motion was carried, and the Bill read a second time.

MR. HARINGTON moved, pursuant to notice, that the Standing Orders be suspended to enable him to carry the Bill through its remaining stages to-day. The Council had already been informed that the extra duty proposed to be imposed upon Salt imported into the North-Western Provinces from across the Frontier, was being levied at the present time under an order of the Supreme Government, and a Section had been added to the Bill to indemnify all persons concerned in levying the higher rate of duty under that order. But it was obviously desirable that the sanction of law should be given to the measure as soon as possible, and he trusted therefore that the Council would not object to give their assent to the Motion which he had just made.

SIR BARTLE FRERE seconded the Motion, which was put and carried.

MR. HARINGTON then moved that the Council resolve itself into a Committee on the Bill.

Agreed to.

The Bill passed through Committee after a verbal alteration in the Title, and, the Council having resumed its sitting, was reported.

MR. HARINGTON moved that the Bill be read a third time and passed.

The Motion was carried, and the Bill read a third time.

MR. HARINGTON moved that Mr. Ricketts be requested to take the Bill to the President in Council in order that it might be submitted to the Governor-General for his assent.

Agreed to.

ZILLAH COURT OF FURRUCKABAD.

MR. HARINGTON moved the second reading of the Bill "to repeal certain laws relating to the jurisdiction of the Zillah Court of Furruckabad."

The Motion was carried, and the Bill read a second time.

KING OF OUDE.

MR. HARINGTON moved the second reading of the Bill "to provide for the execution of process within the precincts of the residence of His Majesty the King of Oude."

The Motion was carried, and the Bill read a second time.

JAMSETJEE JEJEEBHOY BARONETCY.

MR. LEGEYT moved that the Council resolve itself into a Committee on the Bill "for settling Promissory Notes of the Government of India producing an annual income of one lac of Rupees and a Mansion House and Hereditaments called Mazagon Castle in the Island of Bombay, late the property of Sir Jamsetjee Jejeebhoy, Baronet, deceased, so as to accompany and support the title and dignity of a Baronet lately conferred on him and the heirs male of his body, by Her present Majesty Queen Victoria, and for other purposes connected therewith."

Agreed to.

The Bill passed through Committee after a verbal amendment in the Preamble, and, the Council having resumed its sitting, was reported.

MR. LEGEYT moved that Mr. Ricketts be requested to take the above Bill, as now settled in Committee of the whole Council, to the President in Council in order that it might be transmitted to the Secretary of State for India, with the request that he would obtain the sanction of Her Majesty to the same.

Agreed to.

PASSENGERS.

MR. LEGEYT moved that the Council resolve itself into a Committee on the Bill "to amend the law relating to the carriage of Passengers by Sea."

Agreed to.

The Bill passed through Committee without amendment, and, the Council having resumed its sitting, was reported.

MEERAS LANDS.

MR. LEGEYT moved that the Report of the Select Committee on the Bill "to limit the period within which a Meerasdar may assert his claim to lands which he has abandoned or for which he may have failed to pay assessment," be adopted.

Agreed to.

KING OF OUDE.

MR. HARINGTON moved that the Bill "to provide for the execution of process within the precincts of the residence of His Majesty the King of Oude" be referred to a Select Committee consisting of Mr. LeGeyt, Mr. Forbes, and the Mover.

Agreed to.

ZILLAH COURT OF FURRUCKABAD.

MR. HARINGTON moved that the Bill "to repeal certain laws relating to the jurisdiction of the Zillah Court of Furruckabad" be referred to a Select Committee consisting of Mr. Forbes, Mr. Sconce, and the Mover.

Agreed to.

POLICE (PRESIDENCY TOWNS AND STRAIT SETTLEMENT.)

MR. FORBES moved that a communication received by him from the Madras Government be laid upon the table and referred to the Select Committee on the Bill "to amend Act XIII of 1856 (for regulating the Police of the Towns of Calcutta, Madras, and Bombay, and the several stations of the settlement of Prince of Wales' Island, Singapore, and Malacca)."

Agreed to.

WATER-SUPPLY (KURRACHEE).

MR. LEGEYT moved that a communication received by him from the Bombay Government be laid upon the table and referred to the Select Committee on the Bill " to provide for better supplying with water the Town and Suburbs of Kurrachee."

Agreed to.

EXCISE ON SALT (MADRAS PRESIDENCY).

MR. FORBES moved that a communication received by him from the Madras Government be laid upon the table and referred to the Select Committee on the Bill "to establish a Duty of excise on Salt manufactured in the Presidency of Fort Saint George."

Agreed to.

The Council adjourned.

APPENDIX.

MINUTE ON THE DESPATCH OF THE SECRETARY OF STATE RESPECTING A PAPER CURRENCY, BY THE RIGHT HON. JAMES WILSON.

Dated Governor-General's Camp, Meerut, 25th December 1859.

THE Despatch of the Secretary of State, No. 109 of the 4th of November, deals with the two subjects, of a Paper circulation and of a Gold coinage as applicable to India. In this minute, I propose to confine my attention to the former of these questions, and to deal with the latter in a separate minute.

The Secretaty of State expresses the views of the Government in the following terms:—

"Her Majesty's Government are fully sensible of the advantage which might be derived from introducing a well regulated Paper currency into India; but the wisdom of cautiously avoiding any measure calculated, however slightly, further to increase the sensitiveness of the Indian Money Market, is so manifest, that they are not disposed at present to direct the introduction of a Paper currency, whether in the form of Government Notes, or by means of extended privileges to the Chartered Banks. I am, however, anxious that your attention should continue to be directed to this subject; and I shall be prepared to give every encouragement to a well considered measure for the purpose, whenever the time shall appear to you to have arrived, for introducing it."

While, therefore, the Secretary of State appears to be in favor of the introduction of a well regulated Paper currency into India, he was indisposed to give any positive directions that measures should be taken with that view—I suppose in deference to the apprehensions expressed in the Despatch of the Government of India of the 27th of April, that in the then state of the Indian Money Market, such a step might be viewed with mistrust by the community. But he expresses an anxiety that the subject should continue to engage the attention of this Government. And as soon as it should appear that a sound measure could be proposed, without any danger of misapprehension, I infer that we may rely upon every encouragement being given to it by Her Majesty's Government. It would certainly be much to be regretted, should the circumstances under which so salutary a system was introduced, raise an impression that it was adopted rather as a means of momentary relief from a monetary pressure, as has been too often the case when Governments have resorted to an issue of paper, rather than as a sound financial reform calculated to confer great benefit upon the country and to effect an extensive economy of its available capital, and equally valuable therefore at all times without reference to any momentary circumstances. It must be evident, however, that suspicions, such as have been referred to, must be excited only in proportion as it may appear that the steps taken are calculated to furnish immediate means to the Government of raising money. If for example, the Government were to issue notes inconvertible, or even with the profession of their being convertible in payment of its own expenditure, and without therefore retaining in any shape a security to represent such issues, an impression of that kind might be well founded; but if, on the other hand, the Government erects a system of substituting paper for coin, retaining and setting aside as a strictly appropriated security available at all times for the redemption of such paper, the whole of the valuable consideration which it receives in exchange for such notes at the time of issue, then it must be quite clear that no such mistrust can exist as to the motives of the Government, to whose treasuries or means of expenditure at the moment the measure could not add one single Rupee. I lay it down, therefore, as a rule, that this apprehended danger must be regarded as real or not, only in proportion as the plan proposed is intrinsically sound or unsound. But it may be said that it is against the prejudices of the ignorant, who would not discriminate very closely between a sound and an unsound system, and not against the opinions of the well informed, who could understand such a distinction, that we have to take precaution. It may, however, be assumed, that already the public credit is so much improved as compared with the condition in which it stood in April last, and, moreover, that, in the meantime, the question of a Paper currency has been sufficiently discussed by the public as desirable for the good of the country, that in no quarter is any real objection likely to be now raised against its introduction. I assume, therefore, that the time has arrived to which the Secretary of State refers, "when a well considered measure" may be safely adopted. And I, therefore, propose to proceed to consider the best means by which this important object can be attained.

2. In considering the subject of a Paper currency for India, the circumstances by which it must be governed are

so novel, and the position of the Government is so peculiar, that it may be useful to review the question from its foundation, in order to arrive at a clear perception as to the best mode in which so useful a reform can with perfect security be applied. In the advanced stage in political economy at which we have arrived, there is so much of general principle universally admitted, that many of the preliminary considerations may be simply stated as admitted, axioms requiring neither argument nor proof to sustain them.

3. As the first of these truths, it may be stated that the only object of a currency is to facilitate the exchange of commodities, by representing some common standard of value to which that of all other commodities is made referable, and in which it is expressed.

4. For reasons well known and fully admitted, the precious metals (gold and silver) have been adopted as the general standards, which, for the greater convenience of transactions, have been coined into pieces of uniform weight and fineness known as money.

5. This coin, so far as it is used for currency, causes a real abstraction of capital from its ordinary and profitable channels, but the apparent waste so entailed is more than counterbalanced by the additional value which is given to the remaining capital as a consequence of the greater facility thus afforded to the exchange of commodities. But in no direct way, as is too often supposed, especially by those who advocate an inconvertible Paper currency, can the available capital of a country be added to by an increase of a mere circulating medium, whether it be metallic or paper.

6. It is admitted that, inasmuch as there are no two commodities which uniformly retain the same relative value to each other, so strictly speaking, there can only be one standdar of value, although, from the circumstances of gold and silver varying so little within any moderate period of time, there are not wanting many examples, ancient and modern, when a double standard of the two has been adopted, by fixing an arbitrary relative value to the two metals. This subject, as I have already stated, I propose to treat fully in a separate minute upon the gold sovereign question, and I will therefore now proceed upon the fact that in India the more correct principle of a single standard has prevailed, and that that standard is silver.

7. Inasmuch then as the coin required for circulation is a real abstraction from the available active capital of the country, it follows that any method that can be adopted by which the quantity of coin required for the transactions of the country may be reduced, with perfect security to the maintenance of the standard, to that extent so much capital will be released from an unprofitable employment and returned into the channel of re-productive uses. The chief methods by which such economy can be effected, are through the medium of Banking operations, by Cheques or Orders, transferring sums of money from one account to another, without the intervention of coin, by Drafts, Bills of Exchange or Hoondees drawn from one point upon another and used as remittances; but the great means of economising coins is by the issue of Bank Notes payable to bearer for small sums, uniform in amount and suited to the daily wants of a population in relation to the character of their dealings, and bearing so high a credit that they are received from hand to hand without hesitation as money. What Cheques and Drafts for large amounts are to the trading and rich classes in large transactions, Bank Notes are to the community at large in the transactions of every day life.

8. Independent of the great advantage of a well secured Paper currency in economising the capital of a country in the manner already pointed out, it effects a considerable saving in three other important ways: *first*, it reduces to a great extent the cost of a mint; *second*, it saves, to whatever extent it displaces coin, the serious wear and tear to which the latter is exposed; and, *third*, it affords great facilities to the public in the use of money, and especially in its transmission from place to place; and these advantages are experienced to the greatest extent, when the coin, as in India, is nearly exclusively of silver, and therefore of great bulk in proportion to its value.

9. It has, indeed, been objected to a Paper currency, that it has the effect of lessening the amount of the precious metals in a country, and therefore of placing it in greater difficulty, in the event of a demand for bullion, to correct an adverse exchange. This objection is, however, obviously based upon a fallacy. On the contrary, as has been shown by Ricardo and other high authorities, the use of paper at such times tends materially to modify the effects of a drain of bullion, and the panic which usually attends such an event. It is true that, to whatever extent paper supplants the metals in a country, there will be less of the latter in *circulation*. But it is an entire mistake to suppose that at such a time any of the

coin in circulation can be released for export: on the contrary, it is consistent with all the best and most recent evidence upon the subject, and the experience of the recent commercial panics in England, that at such times the discredit and apprehension which prevail invariably lead to an extra demand for currency, not so much for circulation, as for strengthening the reserves of Country Bankers and others, but which tends to aggravate the external demand at the moment. Thus a purely metallic circulation, in place of aiding the demand for external purposes at the time of a drain, aggravates it by requiring at the same moment to be increased. But when a sound and well regulated Paper currency exists, in which the public have confidence and which is a legal tender, it is readily accepted and used to strengthen such reserves at times of discredit, leaving more bullion available for the foreign demand. This effect was particularly observable during the panics of 1847 and 1857, when the circulation of Bank of England Notes in the hands of the public considerably increased. Again, it must be borne in mind, that the economy of available capital, effected by the use of notes, leaves a larger fund disengaged in the form of bullion or otherwise of other commodities as the means of adjusting foreign claims. Coin in use required for active circulation cannot to any extent ever be made available for foreign payments.

10. But in order to render paper, which has of itself no intrinsic value, a safe and useful substitute for coin, there are certain conditions which must attach to it: these may be thus stated:—

First.—The paper must be identical in exchangeable value with the coin it represents.

Secondly.—To be identical in value, it should be identical in quantity with the coin which is displaced by its use; so that in point of fact, the mixed currency of notes and coin would be of the same amount as if it were wholly of coin.

Thirdly.—All the laws which would determine variations in the quantity of coin in circulation from time to time should apply equally to a mixed circulation of coin and paper: the latter not being an addition to the currency, but only a substitution of a portion of the coin which would otherwise be required.

Fourthly.—In order that paper should perform all the functions of coin, it is essential that it should be a legal tender for all payments, except by the issuers, by whom it should be convertible into the coin it represents at the will and on the demand of the holder.

11. In order to obtain all these conditions of a safe and secure Paper currency, and to maintain its value at all times to the full of the coin it represents, and so to prevent depreciation, the great essential is that it shall at all times be readily convertible on demand at the will of the holder into such coin, on presentation to the issuers of the paper.

12. But it is not enough, and especially in a country like India, where the system is new, and credit in such issues has yet to be created, that the convertibility of paper shall be professed or even enacted by law: it is needful that such a suitable reserve of silver shall be provided and maintained as shall ensure such convertibility at all times; and, moreover, that assets of an undoubted and available character shall always exist sufficient to represent the entire amount of such issues, and especially set aside and appropriated for that purpose. And it is worthy of remark that it is exactly in proportion as such provisions are known to exist for the security of a Paper currency, that the circulation will be freest, and that least demand for conversion or payment is likely to be made.

13. By maintaining at all times a fixed proportion of silver to the amount of notes in circulation, and convertible Public Securities for the remainder, not only is the immediate convertibility of any probable portion of notes likely to be presented provided for, and the ultimate payment of the whole specially secured, but a natural and self-acting limit is placed upon the amount of the circulation—a limit which would expand and contract according to the wants of the community in the same manner and to the same extent as a purely silver currency would do.

14. It will be readily admitted, that these conditions being attained, we should have a perfect Paper currency fulfilling all the legitimate advantages to be derived from so economical a substitute for coin, and at the same time perfectly secured against any of the abuses to which it is liable.

15. Such being the case, it remains to be considered in what way these principles can best be applied in India, and these considerations will naturally be ranged under the following heads:—

First.—The agency through which such issues shall be made.

Second.—The manner in which the essential securities and conditions laid down can be best applied, and the machinery necessary to secure their continuance and permanency.

Third.—The functions of the body intrusted with the issuing of such paper.

Fourth.—The denomination of the notes to be issued.

Fifth.—The securities to be taken against forgery.

First. Then, as to the agency through which issues shall be made. Paper money is issued usually ether by Governments or Banks. The main objection to Governments undertaking these functions is the neglect which has usually existed as to any strict regulations by which they could be bound to the necessary precautions for maintaining the convertibility of the note, and thereby placing such a limit upon the amount of issue as should secure its identity of value with the coin. The consequence of the absence of such a check has too frequently been to lead to over-issues and great depreciation of the value of the notes. As sovereigns have too frequently not hesitated to tamper with their coin by reducing its intrinsic value, so they have abused their power of issuing notes by making them inconvertible, but at the same time a legal tender. The two vices are similar in their character. Otherwise, and upon general considerations, it might fairly be thought that Governments were the best agencies through which notes could be issued, as their credit may be supposed to be the highest in the State, and inasmuch also as the credit of individuals, or of private corporations could hardly be made the basis of a legal tender. And no doubt this would be the case, provided any means could be discovered for placing an independent check upon the amount of issue, and of taking security for the maintenance of a sufficient metallic reserve to guarantee the convertibility of the note. The absence of such independent checks hitherto has led to the common practice of leaving the issue of notes to Banks, public and private, although the function of issuing notes is not necessarily part of the business of the Banker. Very few examples, however, exist, where an attempt has been made to give to such notes the character of legal tender. This has necessarily resulted from the absence of any absolute guarantee which the State has taken for the payment of such notes. The private and Joint Stock Banks in England, Scotland, and Ireland, furnish no security whatever for their notes; although, by the Acts of 1844 and 1845, a fixed limit is placed upon the amount of their issues. Their notes are not a legal tender. In France the Bank of France gives no security to the State, nor is there any attempt made to place a limit upon its issues, except that which arises from the condition that the notes shall always be convertible, and which, as long as that condition is maintained, will no doubt act as a natural limit. But no security is taken for the maintenance of a metallic reserve, or for the ultimate payment of the notes. Although, therefore, the question has often been raised before the Government, whether the notes should be made a legal tender, it has on these grounds up to this time declined to adopt the suggestion. In the State of New York and in other States of the Union, notes are issued by all the Banks, but by law they are compelled to deposit with a public department, Public Stocks of the State, or of the Union to the full amount of their issues, which are held as a specific security for the ultimate payment of the notes. The notes are convertible at pleasure by the Banks, but no arrangement exists for ensuring the maintenance of a specie reserve for that purpose. When, therefore, those Banks temporarily suspended payments two years ago, the notes fell to a slight discount, notwithstanding the fact that the State held security for their ultimate payment. The notes are not a legal tender. Indeed, it may be laid down as a rule to be strictly observed, that if notes are to be made a legal tender, without any risk of their abuse, two conditions are requisite:—

First.—That a provision should be strictly maintained for a sufficient metallic reserve to ensure the immediate convertibility of the note at all times.

Second.—That there shall be absolute ultimate security for the payment of the notes. These two conditions for a legal tender paper money are somewhat inconsistent with the other business and obligations of Banks. Banks of issue have a variety of claimants—depositors, holders of their drafts or bills of exchange, and note-holders. To set aside so large a portion of their assets in coin and securities as would be required to cover their note issues, for the particular use and security of one class of their creditors, would be to reduce the security of the others, and, in the event of failure, would lead to a direct preference to one class of creditors to the injury of the others.

16. The nearest approach that has yet been made to the conditions I have laid down as necessary to secure a paper issue of *Legal Tender*, is in the case of the Bank of England under the Act of 1844. By that Act a separation has been made between the two branches of the business of the Bank, the one being called the Issue Department and the other the Bank-

ing Department. The functions of the Issue Department are only to issue notes for coin or in the purchase of bullion, and to exchange bullion or coin in redemption of their notes. The functions of the Banking Department are those of a general banking business in all its parts. In theory, and in practice inside the walls of the Bank, the two departments are as much separated and as independent of each other, as if they belonged to two separate bodies. In the Issue Department a certain proportion of bullion is always held regulated by law, which secures the immediate convertibility of the notes, and the balance of the issues over that amount is represented by Government Securities. There would, therefore, appear to be ample security, both for convertibility into coin, and for ultimate payment of the notes, which are constituted a legal tender. But there is this defect in the plan, which, however, in the case of the Bank of England, is of little consequence. The Bank of England, as a whole, is a single corporation of proprietors, and however it may be able to make such separations of its functions, yet it cannot by that separation, even under the direction of the Act of 1844, set aside and earmark any part of its assets for the sole benefit of a particular class of its creditors, the note-holders. It is, therefore, undoubted, that notwithstanding the appropriation of the bullion and securities in the Issue Department to the notes, the whole assets of the Bank are in common liable to meet the demands equally of all the creditors of the Bank. In the case of so wealthy an establishment as the Bank of England, with a paid-up capital and reserve of profits amounting to about seventeen million sterling, and whose transactions and positions are at all times so open to the public by means of their weekly returns, this defect in the application of the principle insisted upon can only be regarded as nominal. But it would be far otherwise were it attempted to create in India a Bank of corresponding magnitude. In order to be profitable, it would necessarily have to embark in all the ordinary business of banking, and however prudently conducted, there would be all the early risks attendant upon commercial success; and it would be a long time before the same confidence could be reposed in it as there now is in the Bank of England. To make such a new Bank, therefore, the instrument for supplying a Paper currency of legal tender, it would be necessary to make an actual separation and appropriation of bullion and securities for the purpose, and not a mere nominal one as in the case of the Bank of England. And such an actual appropriation of a large portion of the assets of a Bank to one class of its creditors would be inconsistent with the just claims of others, and would be so injurious to the credit of the establishment as to be impracticable.

17. But if the objections to a legal tender note circulation by Banks generally are so strong, in India they become much more so. If it is desirable to establish in any country such paper money, it is essential that it should be of general use throughout, and issued under a single authority. We have only to consider how impossible it would be for any Banking Establishment to extend its agencies over the greater part of India, to see that no such Bank could possibly fulfil the functions of conducting universally the circulation of notes.

18. But, on the other hand, if there are special reasons why this function could not be performed by Banks, there are very special grounds which point to the facility which the Government of India possesses, more than any other Government in the world for such a duty. In the great capitals of the Presidencies, and in many of the large emporiums of trade, little difficulty could arise, however the circulation might be conducted, but it is the Government alone that has agencies established in every part of India however remote. Moreover, it is through these agencies, in the collection of land and other revenues, in the payment of troops, in the purchase of commissariat stores, and in disbursements for the performance of public works, &c., that a great bulk of all the monetary transactions of a great part of India takes place; and therefore, whatever may be the currency in use, it is really constantly passing out of, and into the Government Treasuries. This fact alone would secure to notes issued by the Government, not only the most extensive use, but their being available for payments of revenue, would instantly establish them in high credit with the people.

19. I have no doubt, therefore, that the only means by which a paper note circulation can be extensively applied to India, such as shall be universally current and can be safely made a legal tender, is through the agency of the Government, and that it possesses means peculiarly favorable for the useful exercise of such a function.

20. This brings me to the *second head* for consideration, the manner in which the essential conditions already laid down as needful to maintain the convertibility of the note at pleasure, and in any case

its ultimate security, can best be applied. What we have to do is not merely to lay down theories which ought to be complied with, but also to erect a machinery as simple as possible, for securing the practical observance of the rules necessary to give effect to those theories. In order to do this, I would propose, in the first place, that the functions to be performed by the agency to be erected, should be confined exclusively to those now performed by the Issue Department of the Bank of England, *i. e.* to the exchange of notes for coin and bullion, and the payment of notes in coin or bullion, and in issuing orders for notes at one branch for bullion or notes received at another on such conditions as may be fixed; and that it should undertake no other business of any kind whatever, either for the Government or for others. I see no advantage that could arise from employing this agency for the deposit of the Public Balances, while such a connexion might endanger that perfect separation from the Government Finances and Expenditure, which I hold to be necessary, in order to maintain the complete integrity of the system. In order then to avoid any danger of the system being tampered with by the Government of the day, the duties connected with the issue of notes should be intrusted to officers rendered as independent as possible of the Executive Government. They might be appointed by the Governor-General in Council, but they should not be removable except by the Secretary of State, and their functions should be strictly defined by an Act of the Legislature, to which they should be bound to adhere under heavy penalties.

20½. The establishment which I would erect for the objects described would be in connexion with the mint. I would form a Currency Commission composed of one Chief Commissioner, with whom I would associate the Master of the Mint and some other public functionaries. The Chief Commissioner being the acting officer for the management and issue of notes, while the others should form only a check upon the conduct of the department, upon the reserve of coin to be maintained, and upon the stock of notes in hand, in the same way that certain public functionaries at all our commissariat stations exercise a check upon the chest. Deputy Commissioners would be appointed, one for each Currency Circle, into which the country would be divided in the manner hereafter described, with whom would also be joined certain other public officers who might be found at the station, whose duty it would be periodically to check the balances of cash and notes of the local issuing department.

21. The business of the commissioners in Calcutta should be:—

First.—To manufacture all the notes required, not only for their own district, but also for the whole of India. For many reasons, which it is not necessary to refer to, it is essential that all the notes should be made at one place. But following the practice of the Bank of England, the notes intended for the use of different Provincial Circles would be dated from the centre at which the Bank of Issue of the Circle would be placed. As, however, the numbering and dating of the notes is a separate process of printing, the whole stock of the half completed notes would be available to be completed for any circle, as they might be required from day to day.

Second.—To exchange with the Treasury, and with private persons on demand, notes of the district for coin, and coin for notes of the district.

Third.—To purchase silver, bullion, and foreign coin at the fixed price per oz. Thus giving the importer of silver the opportunity of converting his silver at once into money, and avoiding the inconvenience such as was recently felt at Bombay, when money could not be obtained for silver, simply because the mint could not turn out coin sufficiently fast. This would be giving to the merchants in India a similar facility for disposing of their silver at once for notes or coin, as the London merchant possesses of disposing of his gold to the Bank of England.

Fourth.—To supply from day to day the demands of the local issuing Banks with notes, keeping accounts with each.

Fifth.—To purchase and hold Public Securities to whatever extent should from time to time be deemed advisable, and which should be in conformity with the Regulations laid down by law.

Sixth.—To give orders upon district issuing Banks for notes in exchange for coin, or in payment for Calcutta notes, on terms to be stated and published monthly.

22. Similar functions as are described in Secs. 2, 3, 5, 6, would apply equally to the commissioners at Bombay and Madras, respectively; that is, they would respectively issue their own notes for coin, and would pay coin for their notes; they would purchase silver at a fixed price, they would purchase and hold securities against a portion of their issue, and they would grant orders upon other Banks for notes in exchange for coin or for their own notes.

23. The functions of all the other issuing Banks would be only those described in 2 and 6 to issue notes for coin, to pay coin for their notes, and to give orders at the prescribed rates upon other Banks for notes in exchange for coin or for their own notes.

24. The notes so issued to be a legal tender, everywhere throughout India as well by and to the Government officers as between private persons, excepting only at the different places of issue, where the notes of each district will be payable in coin. Everywhere the notes will consequently be receivable for Government revenue, or for any other demands of the Government, for payments into court under judicial proceedings, and all other purposes whatever, and at every centre of issue the notes of the circle will be payable in coin.

25. I reserve at present the question, whether all notes may not be made payable at the Presidency capitals within which they are issued. I am inclined to believe such may safely be done without any chance of loss to the Government, but the point requires further consideration. I mean that all notes issued in Bengal, the North-Western Provinces, and the Punjab, should be payable at Calcutta as well as at the place of issue, and that all notes issued in the Presidencies of Bombay and Madras respectively, should in like manner be payable in Bombay and Madras. I incline to think that the course of the exchange between the interior and the shipping ports is always such as would admit of this concession without loss, and if so, it would be a great advantage to the circulation of the notes. That the tendencies of the exchange will always be as they in fact are at present in favor of the interior of India, is plain from the fact that the quantity of produce which comes down for shipment is much larger than of goods going up. At the present time in the North-West, a bill on Calcutta for 100 Rupees may be purchased for 98 Rupees, showing a premium of 2 per cent. in favor of Up-country. Assuming then that it is safe to make all the notes payable in the Presidency Towns, the condition of the circulation would be exactly that of Bank of England notes: the notes would be payable for revenue *every where*, each note would be payable in coin *at the place of its issue*, and all notes of the Presidency wherein issued would be payable in coin at the capital of the Presidency.

26. In order to maintain the instant convertibility of the note at the place of issue, the commissioners shall be obliged at all times to retain an amount of coin, bearing such a proportion to the notes in circulation as shall from time to time be determined upon, but never less than one-third, and for the remainder of their issues they shall hold Government Securities. As I have already intimated the Government Securities, representing the issue of the Provincial Commissions, should, for the sake of convenience, be purchased and held at the Presidency Towns, but each District Commissioner would have the amount, representing the coin or bullion he had remitted for such investment at his credit, and to that extent he would have authority to draw for coin if required from time to time. By this means the duty of buying and selling securities would be entirely confined to the Chief Commissioners at the Presidency Towns. One obvious advantage of thus aggregating in the hands of the Chief Commissioners in the Presidency Towns the portion of the assets of the provincial issuers to be invested in securities, leaving in their hands only the amount of coin required to secure convertibility, would be, that they would generally be able to furnish coin on demand to one branch to make up a deficiency in the reserve where required, by the surplus of others, without actually selling securities. In point of fact, the effect would be to enable the Chief Commissioner, without frequent action upon the securities, to maintain the just average reserve among all the branches, by applying the temporary redundance of coin in the one to the temporary deficiency in another, always maintaining the desired proportion in the aggregate. These transactions however, after the system was fairly established, would be of rare occurrence, as the amount of notes in circulation, and consequently the reserve of coin and of securities to represent them, do not vary much from time to time over extensive districts.

27. It may be well now to consider the manner in which the system would come into operation, and in which it would particularly act. I will take Bengal as an example.

28. As it would be desirable that there should be only one class of notes in circulation, and that all others, except those of the Government, should be withdrawn, an arrangement would be made with the Bank of Bengal to substitute Government notes for their own now in circulation within a certain period of time.

29. Attached to the mint in Calcutta would be a great Central Bank of Issue. There the notes for the whole of India would be made, as the Bank of England notes for all the branches in England are

made in Threadneedle Street. The notes to be issued at Calcutta bearing date accordingly, while those made for the different branches, would be dated from each branch as the Branch Bank of England notes are dated from each of its branches: in every other respect the notes would be the same. So far then as the Calcutta circulation was concerned, the first operation would be that the commissioner would at once receive from the Public Treasury a large proportion of the coin now held in the Treasury, into the Issue Department in the mint, for which they would give a corresponding amount of notes. The Banks would also have to provide themselves with notes in exchange for a portion of their coin to supply their customers. Thenceforward the Treasury would pay every thing in notes, small sums only being paid in coin. But the recipients of the notes would always be able to obtain coin for the notes at the Issue Department in the mint. In the next place, merchants importing silver, in place of carrying it to the mint and waiting till it was coined as at present, would at a certain fixed price carry it to the Issue Department in the mint and obtain notes for it at once. In practice those notes would be paid into the Banks to the credit of the importing merchant and would be exchanged for coin at the convenience of the Banks. But, practically, their reserves would be held in notes as far more convenient than the small silver coins in which they are now held. This part of the business of the Issue Department would thenceforward be self-acting. When coin was wanted, notes would be carried in and exchanged for it; when notes were required, silver bullion or coin would be given for them; when silver was imported, it would be taken to the Issue Department in the mint, and exchanged for notes. Notes would be issued under no other circumstances either to the Government or any other party. The operation is exactly that which is performed by the Issue Department of the Bank of England. For a considerable period at first, until the system got firmly rooted, I would retain a very large portion of the whole coin and silver obtained in exchange for notes in hand, but after a time I would purchase Public Securities with a portion, but under no circumstances retaining less than one-third of the amount of the circulation in coin.

30. With regard to the Provinces, I would divide Bengal and the Upper Provinces into convenient districts for the purpose, to be denominated *Currency Circles* in distinction to the Revenue divisions and districts at present existing, adopting one of the chief existing stations, such as Benares, Allahabad, Delhi, &c., as their centres. The deputy commissioner would each be furnished with a stock of notes dated for his district. The first thing he would do would be to furnish each Treasury in his district with a quantity of notes in exchange for a portion of coin held by them, and the Treasuries would pay the notes in satisfaction of demands upon them. They would also receive them in payment of revenue. The deputy commissioner would in like manner supply local Banks and others, but only in exchange for coin or silver, and he would always be prepared to give the local Treasuries, or to private persons, coin in exchange for notes if required.

31. As soon as the system was well introduced, a portion of the silver obtained for notes would be forwarded to the Chief Commissioner in Calcutta, to be invested in Public Securities. The amount of such remittances of coin would be placed to the credit of the branch, and would be available in case of need for the use of the branch. But these remittances should never be made to an extent which would leave the local branch with a reserve in coin less than one-third of the circulation of the branch. The only other business which the branches would perform would be to give orders upon other branches in exchange for coin or notes at the established rates of the day. These orders would be adjusted as between the different branches in the books of the chief office in Calcutta.

32. By these arrangements, there would exist an absolute check upon the amount of the circulation, as well as a guarantee that it would fluctuate in quantity exactly as if it were purely metallic. The convertibility of the note would be secured by the large reserve of coin, and the ultimate payment of the notes by the balance held in Government Securities, while a large profit would accrue to Government from the interest of such securities thus held against the portion of the notes not represented by coin. Another and not inconsiderable advantage would be that the withdrawal of so large an amount of Public Securities from the market would raise the price of the remainder, and in that proportion the credit of the Government.

33. On this part of the subject, it is only necessary to add that I would, by enactment, provide for a monthly publication in the *Gazette* of the amount of notes in circulation by each branch, with an aggregate of the whole; also of the amount of coin and bullion held by each

branch, with an aggregate of the whole; and of the amount of securities held by the commissioners in Calcutta, Bombay and Madras respectively, on account of the branches, and the aggregate of the whole, in a form to be given in the Schedule of the Act. Such a return would have a great effect in creating a confidence in the system.

34. The *fourth point* to be considered is the proposed denomination of the notes to be issued. In considering this question there are many peculiarities in the case of the proposed issues to be taken into account. We have first to bear in mind that there can neither be temptation nor opportunity for over-issues of paper, whatever be the denomination. This will be apparent, when it is considered that there will be but *one* single agency for the issue of notes, and therefore no competition to force notes on the market. That notes will only be issued in exchange for coin or bullion, and in no instance, as in the case of Banks, in the form of discounts, loans, or advances upon credit; and, lastly, that the whole amount of the notes in circulation will be at all times represented to their full value in coin, and Public Securities strictly appropriated in the hands of the commissioners. Not one of the grounds of apprehension which have been urged against notes of a small denomination, to the effect that they had the tendency to render credit too easy in the case of competing Bankers, issuing paper by way of advances, would exist in this case. In the plan proposed, the same security would exist for notes, however small the denomination.

35. But the most important consideration of a practical kind in determining this point, is to have reference to the character of the transactions of the country in their amount. In India the chief peculiarity of monetary transactions is, their extreme number, and their minute character. Notes of a large denomination could only find comparatively a very limited circulation, and if issued, would soon be returned in exchange for coin from the mere necessity of providing for small payments. The consequence would be that the issuing branches would be constantly called upon to convert the notes simply, because they were of a denomination not suited to the transactions of the country.

36. In some of the British Colonies (in Newfoundland in particular) notes of the value of *one dollar* have been found a safe and convenient circulation, (the convertibility having been maintained), because the transactions with the fishermen and others are of such small amount. In the Mauritius, notes of the denomination of 10 shillings or 5 Rupees have circulated for some years under Lord Grey's principle without abuse, and have been found extremely useful to the Planters and the public. In Ceylon the Bank issued five-shilling notes for many years, and when the limit was raised to ten shillings, which it is at present, it was regretted both by the Planters and the public. By the charters of the two Banks in Ceylon, they are now limited to notes of ten shillings, which circulate to a considerable extent, and, Sir H. Ward informs me, are found to be a great convenience. Throughout Prussia and others of the German States, notes of the denomination of one *thaler* or 3*s*. have for many years circulated without any tendency to depreciation. In none of these cases, however, do the same securities exist for the maintenance of convertibility as we propose to take in India.

37. In the first instance, I would propose to begin with notes of the denomination of 5, 10, 20, 50, 100 and 500 Rupees. The effect of these denominations would be that remittances would be made in the larger notes, and exchanged for daily use, not in coin, as would be the case if there existed notes only of a high denomination, but into notes of the lower denominations. All payments below 5 Rupees, and fractional payments above, would be made in silver and copper.

38. To have a circulation of large notes only, would merely be to enable the public to remit a considerable sum from one place to another, and to throw upon the Issuing Department of the Circle the duty of providing Rupees in exchange, whereas, if smaller notes were issued, the change would be given in them.

39. The *fifth* and *last consideration* is, as to the securities to be taken against forging. Upon this point, I have had much communication with the Governor and Deputy Governor and the officers of the Bank of England. Long experience seems to have brought them to a position in which forgery may be said to be now almost impossible. They rely chiefly upon the quality and peculiarity of the paper, and of the water-marks by which each denomination of note is distinguished. Besides these, however, they have a series of checks in the numbering and lettering of the notes. To such an extent do these private checks exist, that if the whole of a note were destroyed, except only the number and the letters appended to the number, thus 1789 $^{A}_{B}$, the Bank Cashiers could at once tell the amount, the date, and the place of issue of the note, and whether or not the note had been presented

for payment. It is a curious fact in relation to forgery under the present arrangements of the Bank, that no new attempt has been made at a new plate for a Bank of England note for the last thirty years or more. There are three forged plates only in existence, and whenever a forged note makes its appearance, it is from one of these plates, all of which have existed for 40 or 50 years. Another curious fact about forgeries of notes is brought out in a Parliamentary Return I moved for in 1858. From that it appears that, including Ireland and Scotland, where notes of small denominations prevail, the number of prosecutions for forgery in the United Kingdom in respect to coins is much greater than in respect to notes.

40. The Governor and Directors of the Bank of England, desirous of affording the Indian Government every assistance in their power, have generously afforded to waive all their peculiar privileges in respect to paper, water-mark, printing, &c., in our favor, to allow the paper for India to be made in the same establishment, of the same materials, and with appropriate water-mark suited for Indian notes, and to give us the aid of their mechanical and other officers, to secure for us at once all the advantages which long experience has afforded to them.

41. However clever, therefore, Indians may be at imitating writing or printing, the paper used by the Bank of England, with the water-marks which are visible to the common eye, would be a great security against even the attempt being made, and even if made, we may be satisfied that what has been found impossible in England, would be at least not less so in India.

42. But the difficulty of forging such notes would not rest even there; it would require a long time and a large outlay of capital to complete the rudest imitation of such notes. To make all the moulds, &c., necessary to complete a new Bank of England note with all the experience which the Bank possesses, with all the aid of its able mechanical officers, and with an unlimited command of capital, would occupy upwards of two years. The simple question of cost, therefore, and the little chance of ultimate success, would, in India more even than it does in England, deter the attempt. So rare indeed is the faculty of preparing the plates for the water-mark in the paper, that it may be said to be confined to a single family employed by the Bank of England.

43. Again, even supposing the attempt were made, the difficulty of uttering false notes in India would be very great, at least in any such sums as could form an inducement for forgery. With the great advantages which we should thus enjoy through the Bank of England, I think that the risk of forgery in the case of India would be reduced to a minimum.

44. It would be difficult, with the extent of information we possess, and in the absence of any experience, to form even an approximate opinion as to the extent to which a paper circulation might be carried in India. During the last twenty-three years, *one hundred and five crores of Rupees*, no less a sum than £105,000,000 in Rupees, has been coined at the Indian mints. That the whole, or nearly so, of this sum has been retained in India and now exists in one form or another in addition to the stock then on hand, is certain. No doubt a considerable portion has been converted into ornaments and applied to other purposes; but even making a full allowance on this score, the amount of coin actually in use at the present time must be far greater than is generally supposed. In the Government Treasuries alone the balances are seldom less in Rupees than from eleven to thirteen millions of pounds sterling But whatever the amount to which the circulation of notes might rise, under the system proposed, no objection could be offered to it however great, inasmuch as the coin and the securities held against the notes would continue to rise in the same proportions. One of the great advantages of the system is that it would be entirely self-acting, at all times accommodating itself to the legitimate wants of the community.

45. Much has been said of late as to the cost of producing notes and the profit of a paper circulation. According to the system followed in the Bank of England, no doubt the cost of producing notes is very considerable. The largest use of the notes issued is in London, and among the London Bankers. As a matter of convenience to them in receiving and paying away notes of consecutive numbers, the Bank never re-issues the same note a second time. It not unfrequently happens, therefore, that large amounts of notes, which pass out of the Bank in the morning, are again paid in, cancelled and destroyed on the same day. The average life of each note under these circumstances is therefore very short. But in the branches in the Provinces, where the habit of re-issuing exists, it is very different. But even under these unfavorable circumstances, the net profit of the Bank issues against fourteen millions of securities is estimated, after all deductions are made for expenses of management of every description, at £283,000 a year,* of

* See Mr. Goulbourn's letter to the Governor of the Bank in 1844.

which the sum of £120,000 is paid to the Government as the share the public is entitled to for the privilege enjoyed by the Bank.

46. But whatever advantages the Bank of England may enjoy, those which attach to a paper circulation in the hands of the Government of India would be much greater in amount and more varied in character. In the first place, the working of a Paper circulation for Government purposes alone would tend to an economy in the employment of the Military as Treasure escorts variously estimated in number. In the next place, there would be no motive for the Issue Department in India to cancel the notes in the manner done in the Bank of England. Indeed, notes would rarely come into the Issue Department at all, except when worn out, or when an accidental demand arose for bullion. Into the Government Treasuries no doubt they would come freely, but they would be re-issued as by any private Banker. There would, therefore, be nothing like the same waste of notes. In the third place, the profit of the issue of the Bank of England against the Public Securities held by them must be measured by the interest which those securities bear, which is 3 per cent.; while the securities which would be held in India against the profitable portion of the circulation would pay at least 5 per cent. interest. The effect would be the absorption of a given amount of the existing Indian debt to be held in the Issue Department, the interest being paid to that department, but again passing into the Public Exchequer as the profit of the department. It would practically and in effect be the same as cancelling so much public debt. And in the last place, a great advantage would be gained to the Indian Government by the practical withdrawal of so much of the Public Stock, the enhancement of the value of the remainder as a consequence, and with it a corresponding improvement in the credit of the Government. But over and above these great and special advantages which the Government would derive, the public would obtain advantages in the shape of new facilities of an important nature from the use of a convenient and sound Paper currency, as compared with the present inconvenient coinage.

47. There remains, however, yet to be noticed an advantage which would arise from the system, which though common to all countries which adopt a Paper currency, would paticularly apply to India. I have already indicated the enormous amount of silver, which has been absorbed in the circulation of India, and I have shown in the early part of this minute that the precious metals so used for circulation, however useful and necessary as an instrument of exchange, nevertheless in effect constitute an absolute reduction of the capital of the country available for re-productive purposes, and therefore that any means by which, through the instrumentality of paper, coin can be released from circulation, must have the direct effect of restoring a large portion of such coin to the stock of the re-productive capital of the country. The portion so restored would be governed by the extent to which the Issue Department invested the coin received for notes in the purchase of Public Securities. The operation would be this:—suppose one of the Banks to issue notes in exchange for coin to the extent of three crores of Rupees, one crore would be retained as a reserve to meet demands for conversion, two crores would be applied to the purchase of Public Stock to be held in security for the balance. This purchase would disengage the capital of the persons from whom the purchase was made to that extent, and which would be at once available for other purposes. This operation would increase the price of Public Securities by the additional demand, and would tend to reduce the rate of interest by increasing the fund available for employment in mercantile and industrious pursuits, and thus the economy of capital alluded to in the early part of this minute would be effected to whatever extent the Issue Department held Public Securities against the notes in circulation, which after a time must necessarily amount to a very large sum.

48. I regard it rather as an advantage than otherwise, that the introduction of this system of paper money would necessarily at first be gradual on account of the impossibility which would exist of furnishing notes for the whole of India, except after some considerable time. I would propose therefore to apply the practice first to Calcutta and the Circle in Bengal, which, in the division of the country, which we shall make, will be attached to it, and next in like manner to Bombay and Madras; gradually extending the system into the Mofussil as our means of producing the notes shall enable us to do so. The advantage of a scanty supply of notes in the first place would be that a demand would be created for them on account of their superior convenience in advance of their supply. But I should hope within two years at the outside to have the whole system in full operation.

49. I desire that this proposal for a sound paper circulation in India may be considered as a plan altogether apart from, and independent of, the creation of a large Banking Corporation adequate to the re-

quirements of the trade of the country, and through which all the business of the Government may be transacted, as that of the English Government is with the Bank of England. I do not wish that I shall be understood in proposing this plan in any way to close the consideration of the establishment of such a Bank which might, in fact, represent the Banking Department of the Bank of England performing all the functions which that department does towards the Government and the public. From what I have already said, it will be obvious that the creation of a Government Issue Department will be in no way inconsistent with the establishment of such a Banking Company.

50. In conclusion, I would beg to express a strong opinion that a paper circulation established by the Legislature on so wide but so sound a basis, the operations of which would be always known to the public by means of the monthly returns, would, in place of exciting mistrust in more ways than one, place the credit of the Government upon a sounder basis, and would certainly expose it to less risk than it now incurs by the temptation which is held out to disaffected persons by the existence of numerous small Treasuries scattered all over the country, whose balances consist exclusively of coin. And I own therefore that I think the moment has arrived to which the Secretary of State in his Despatch refers, when the establishment of such a system may not only be recommended, but, I would even say, when no time should be lost in making the necessary preparations for its adoption.

GOVERNOR-GENERAL'S CAMP;
Meerut, 25*th Dec.* 1859.

MINUTE ON THE PROPOSAL TO INTRODUCE A GOLD CURRENCY INTO INDIA, BY THE RIGHT HONORABLE JAMES WILSON.

Dated Governor-General's Camp, Meerut, 25th December 1859.

Financial Dept.

IN the Financial Despatch No. 109, dated the 4th of November 1859, from the Secretary of State, upon the subject of a Paper currency for India, the consideration of the Indian Government is invited to the question which has recently been much discussed, of introducing the English "Sovereign," or some other gold coin, into the circulation of India, as being one intimately connected with that of a Paper currency.

2. The discoveries of gold of late years, and its diminishing price in relation to silver, added to the great demand which has latterly existed for the latter metal for shipment from England to India and China, have combined to create a strong public feeling in favor of making use of gold in some form or other as part of the circulating medium of India.

3. No one will be inclined to deny that if we had to begin a system of currency *de novo*, the most convenient of all the various systems now in practice would be found to be that used in England, where gold is the standard, gold coin the general money in circulation, and silver tokens, of limited tender, the subordinate coins.

4. But we have to deal with a long established standard of silver in India, in which liabilities to a large amount, in the shape of public debt, and obligations of varied character running over a long series of years, have been incurred in silver. For it must be borne in mind that a contract to pay a given sum of money is nothing more nor less than a contract to deliver a given weight of that metal which is the standard at the time the contract is made, and that to alter or vary the standard, and to adopt another metal because it is cheaper, is simply to enable the debtor to break faith with the creditor. It is true that the metal in which a debt has been contracted may fall in value by a large increase in its quantity, but that is a risk which the creditor runs, and of which he has no right to complain; in like manner, the metal may rise in value, but that is a risk which the debtor incurs when he enters into the transaction, and of which therefore *he* has no right to complain. If two men enter into a contract, one to deliver, and one to receive a given quantity of wheat, at a distant day, however much wheat may have fallen in price in the meantime, the receiver has no right to complain, any more than the deliverer would have, had it in the meantime risen as much in price. But if the person whose duty it was to deliver wheat, finding that it had risen much in price since the contract was made, sought to deliver barley or some other grain, which in the meantime had become relatively cheaper, the injustice of such an attempt would be plain. But it would be equally unjust, after a contract had been made in a silver standard, to change the standard into gold, because it was becoming more plentiful, and in relation to silver, likely to become cheaper.

5. Since the first discovery of California, this subject has been much forced into discussion, owing to the various ways in which

a great and sudden increase in the supply of gold was likely to affect various countries. The first impression was that a great fall would take place in the price of gold as measured in silver. Up to this time, however, the change in the relative value of these two metals does not at the outside exceed five per cent. Before the gold discoveries, silver was rarely so low as 4*s.* 11*d.* the oz.; since, it has seldom reached, or at least exceeded, 5*s.* 2*d.* the oz.; but under the apprehension of a fall, the Government of Holland, proverbial for its caution, was the first to take alarm, and having then a circulation of both gold coins and silver coins, which were a legal tender at a fixed relation to each other, they demonetized the gold coin, leaving silver, the ancient standard, the only legal tender.

6. In Belgium, a similar state of things existed. Their standard and chief coins were silver, but they had, chiefly for the convenience of travellers, attached a fixed rate to the gold coins of England and France, and had coined 20-franc pieces of their own. They followed the example of Holland, demonetized gold and fell back upon the single silver standard and coin.

7. In India coins both of gold and silver were in partial circulation. The mint proportion which those coins bore to each other was that of 15.153 of fine silver to one of gold. The gold coin was not however a legal tender, but as the intrinsic value of the gold coin in the market was at least equal to the silver Rupees which it represented, there was no difficulty in passing them, and the Government accepted them in the public Treasuries at the nominal rate at which they were coined. But as soon as the price of gold began to fall, and the Gold Mohur piece was no longer of the same value as 15 silver Rupees, it was evident if the Government continued to receive them into the Treasuries without the power of paying them out at the same rate, that a great accumulation of gold pieces would have taken place, which the Government could not use as money, and upon which in the sale it must have lost considerably. To avoid this, the Government had the choice of two plans, the one to reduce proportionately the rate at which the gold coins would be received, so as still to leave a margin for loss; the other to prohibit the receipt of gold coins altogether, and to accept only the legal tender coins of silver. They adopted the latter.

8. In the United States at that time they had a double standard of gold and silver, and coins of each metal. But as silver became dearer in proportion to gold, it was shipped away to so great an extent as to lead to great inconvenience for the want of small coins, the place of which could not be supplied with gold. In 1853, therefore, the American Government had recourse to the plan of reducing the weight of the silver coins, (the dollar being reduced from 412½ grains to 384 grains of silver,) so as to make them tokens like the English silver coins, limiting their tender to five dollars; and thus adopting a single standard of gold.

9. In France, a double standard had prevailed at least since the decree of Napoleon the First, in 1801. By that decree the relative value of gold and silver was fixed in the proportion of one to 15½, but as six francs are retained at the mint for coining a kilogramme of gold into 155 pieces of 20 francs each, and 1½ francs are retained for coining a kilogramme of silver into 40 pieces of five francs each, the proportionate value of the two metals as coined is one of gold to 15.54, rather above 15½ of silver.

10. From 1801 to 1850, the market price of gold had always a tendency to rise, and being more valuable in proportion to silver, than the rate fixed by the decree of Napoleon, disappeared altogether from circulation and commanded a *premium.* Silver consequently became the only actual circulation. Since the gold discoveries, the price of gold has fallen somewhat below the fixed rates, and in consequence, since 1850, a sum equal to *one hundred and thirty millions* sterling of gold has been coined at the French mint, and a corresponding amount of silver has been exported. For many years prior to 1850, little or no gold had been coined. This has led to a daily increasing scarcity of small coin and to great inconvenience as a consequence. And it is quite certain, if the price of silver continues to rise, that the French Government must resort to some such plan as has already been adopted in the United States, in order to maintain in circulation silver coins for inferior denominations. Indeed, it is chiefly the fact that a large portion of the silver coin now in circulation in France has become considerably reduced below their full value by wear, that has prevented their being exported.

11. In all the German States, in which formerly gold coins circulated at fixed rates, they have been demonetized, and under a convention made in 1857, to which I shall have further to allude hereafter, silver has been reverted to as the sole standard.

12. From these examples, it would appear that, wherever the integrity of the single standard had been in any degree departed from, the small change in the relative prices of the metals which has taken

place, not exceeding as I have shown, five per cent., has immediately led to inconvenience and to an alteration in practice, which in the matter of the money of a country is always to be deprecated In England fortunately the single standard has not been tampered with, and it is accordingly almost the only country in which no change whatever has been made, in consequence of the gold discoveries. No doubt there were at first, not wanting those who being owners of the public stocks, or recipients of fixed incomes, endeavored to create a feeling in favor of some change in order to avoid the depreciation in their property, which they apprehended from the reduced value of gold. But they were at once reminded that all contracts were made in gold, and that whether gold rose or fell in value, the contract as between debtor and creditor must be maintained.

13. With all this experience before us, we are called upon to consider how far it would be wise again to tamper with the principle of a single standard in India, by admitting gold coins into the circulation under some assumed regulation which would avoid inconvenience.

14. I at once say that I know of no conceivable regulations by which such an object could honestly be attained. But I am willing to consider all the various proposals which have been made for that purpose. These may be divided into five heads: *first*, some propose the "sovereign," or some other gold coin should be introduced, and which should circulate at its market price from day to day measured in silver; *second*, others propose that such a gold coin should be made bearing the exact value of a given number of Rupees, say ten, and that it should be made a legal tender for that sum for a limited period, say a year, when it should be re-adjusted, and again valued and made a legal tender for a further similar period at the new rate; *third*, some propose that the English Sovereign should be introduced as a legal tender for ten Rupees, but limited in amount to twenty Rupees, or two sovereigns; *fourth*, some propose to preserve a single standard, but to change it from silver to gold, adopting silver tokens, for subordinate coins; *fifth*, some propose the simple adoption of a double standard of silver and gold, which all the others repudiate.

15. As applicable to most of these schemes, I may remark that the chief object of a coin is that it shall represent a defined and fixed value, well known to the simplest of the people. When it is deprived of this quality, it is reduced to the mere condition of a commodity which is to be bought and sold at rates varying with the fluctuations of the market. The true attribute of the coin is thus gone.

16. This remark applies with great force to the first mentioned of the four plans, for supplementing the Indian currency with gold coins. And if we consider what the practical effect would be, the proposal must be dismissed as wholly impracticable. Let a gold piece be coined to-day, representing the exact value in gold of ten Rupees, to-morrow the price of gold, either from a change in its intrinsic value or from an alteration in the exchanges with England, where it is the sole standard, rises to ten Rupees and four annas, next day it rises to ten Rupees and eight annas, in a day or two more an importation having taken place from Australia, it falls to nine Rupees twelve annas, and then to nine Rupees eight annas, and so on, being influenced by all the accidents from day to day, which determine the price of gold expressed in silver.

17. These fluctuations moreover may not only take place, from day to day, but even during the same day. It would be impossible that such coins could answer the place of money. The cambists and money-dealers could no doubt buy and sell and deal in such coins just as they do now in the metal itself, but except the fact that the quantity and quality of the metal would be ascertained without weighing or assaying, they could just as easily deal in and buy and sell gold bars. To call a coin "money," the value of which could not be vouched for from one day to another, to say nothing of the trouble of ascertaining and computing the fluctuations, would be a mere misnomer, and it is certain that no community would suffer the risk and inconvenience of such a system, that could possibly avoid it.

18. The second plan proposed, though not open to the same objections, is still open to others almost as grave. A gold coin is to be made the exact value of ten Rupees, it is by law to be declared a legal tender for that sum for a year or some specific period of time, both in the hands of the Government and the public. During that period the price of gold measured in silver is continually falling, a profit is gained by the bullion-dealers by importing gold, getting it coined, and forcing it into circulation at the fixed periodical rate. As the year draws to a close, when it is known that the rate will be revised, and the circulating value of the coin reduced in conformity with the fall of gold, every one makes an effort to get rid of the gold coin, a struggle takes place, in which the public Exchequer takes a promi-

nent part, for every one to divest himself of gold coins, and thus to avoid an inevitable loss. But on some one it must fall, and there could not but be great dissatisfaction in the public to find on a given day the value of a large quantity of the coin in its possession, which they had no choice to refuse, depreciated by two, three, or four per cent.

19. When the monetary convention was entered into between the Austrian Government and the States of the Zoll-Verein in 1857, with the view to obtain a uniform and general currency, silver was adopted as the existing standard, but as some States were anxious to retain a right of coining gold, after the greatest consideration, no better plan could be devised than this most imperfect one. But the difficulty of giving a fixed value was found to be so great, that Article XVIII. of the treaty declares that "the silver value of the conventional gold coins will be alone regulated by the relation of the supply to the demand, and they will therefore not possess the property of representing an amount of legal silver coinage, as a medium of payment." But it is further provided by Article XXI., "that each State is to be at liberty to allow such gold coins, to be taken at their Treasuries, in lieu of silver at a rate of exchange to be beforehand decided upon. Such pre-decided rate of exchange shall last at the utmost six months, and at the close of the last month, is to be each time re-considered for the next similar period."

20. As far as I can learn, and as might have been expected, a system of gold currency, so imperfect and exposed to such uncertainty, has practically remained a dead letter. To show the opinion which the parties to the convention entertained of the plan, they took care in Article XXII. to stipulate that all paper money issued by the State should be solely for silver, and payable in that metal. I may conclude then that it would not be thought desirable to adopt this plan.

21. The next and third proposal is to permit the circulation of the sovereign to a limited amount, say of *twenty Rupees*. This idea seems to have originated in the system adopted in England of giving to the silver coins the character of tokens, not of full value, and limiting the amount of tender. But it must be borne in mind, that while this can be done with the low priced metal which represents small transactions, it cannot be done with the high priced metal, the chief object of which is to represent large payments. The objections to the plan may be thus stated :—As long as gold was of a value above the ratio which the coin represented, it would not be circulated at all, but when it fell below that value, every effort would be made to force it into use. The consequence would be that shop-keepers and small dealers would receive many of their payments in a coin with which they could not make large payments without a loss. They might receive £100 in a day from fifty customers, and when they came to place the £100 in the Bank, or to use it for a payment to a a merchant, they would have to submit to a loss equal to the discount upon the gold. From the Mint Regulations in England, a similar loss cannot happen. A similar source of loss would be experienced by Railway Companies, whose fares would be paid in a coin which they could not dispose of in large sums except at a loss.

22. The fourth proposal is to adhere strictly to a single standard, but to change it from silver to gold. As I have already said, I freely admit that if we had to begin *de novo*, convenience would point to a gold standard with silver token coins as the best, although public opinion has been by no means agreed upon this point. It is curious to observe the fluctuations of views upon this subject, and how much they are governed by expediency and convenience at the moment. In 1837, during the panic, silver happened to be rather abundant in the London Market, and difficult to be converted into Bank notes or gold, not being a legal tender. A great pressure from the merchants of London at that time, and again in 1847, under similar circumstances, was made upon the Government of the day to admit silver into circulation, exactly similar to that which now prevails in respect to gold where silver is the standard. I have a very clever pamphlet lying before me, entitled "The Injury, Insufficiency and Inconvenience of a Gold Standard," in which arguments are used quite as strong against that system as now prevails against a silver standard. If a Government were to vacillate in a vital matter of this kind, according to the convenience or interest, either of the debtor class or the creditor class, the integrity of any standard would be entirely lost.

23. But though I admit that a gold standard does possess superior advantages, yet, as I have already shown, in a country where all obligations have been contracted to be paid in silver, to make a law by which they could forcibly be paid in any thing else, would simply be to defraud the creditor for the advantage of the debtor, and to break public faith.

24. The fifth and last plan proposed is to adopt a double standard, such as

prevailed in the United States previous to 1853, and such as still prevails in France. The system of a double standard is practically a permission for the debtor to pay his debts from time to time in the cheapest of the two metals. As I have already remarked, where such a system has existed from ancient times, and where under it the great bulk of obligations have been contracted, the creditor has no right to complain of being paid from time to time in the cheapest of the two metals, because that was the condition of his contract. But in cases where a single standard has long prevailed, the adoption of a double standard is just as much a breach of faith as a simple change of the standard. For it must be plain that the introduction of a double standard is practically the adoption of the cheaper of the two metals at the time.

25. But unjust as such a change would be, inconvenient as a double standard has proved in practice, and inconsistent as it is in principle, yet I have no doubt if it is desired to have the use of both metals in a circulation of full value as coin, that it is the best mode in which that object can be attained. In all the other ways in which it has been attempted to circulate gold coins with a silver currency, the principle either of a varying value from day to day, or that of a periodical adjustment of value, the coin circulating in the meantime as a legal tender, has been found needful. Under either of those plans, the holders are less or more subjected to immediate and individual loss, in the case of periodical adjustment as is proposed in Germany, it may be, to considerable loss. But in the operation of a double standard, the one coin which is gradually becoming of less intrinsic value, gradually and from day to day displaces the coin which is undergoing appreciation. Large supplies of the cheapening coin come from the Mint, and corresponding quantities of the appreciating coin are bought up and exported at a profit. But as long as the two coins circulate together, and to whatever extent they do so, they are in the hands of the public, of the same nominal value, and continue without any intermission to answer the same purpose for all daily uses. However objectionable therefore a double standard may be, and however inconsistent with theory, I hold it to be the least objectionable of all the plans yet proposed for combining the use of the two metals in coins of full intrinsic value, circulating in the same currency.

26. But I would ask—What advantage could be expected from the adoption of gold in India? Upon this subject there is, I believe, much confusion of ideas. It is said that gold is becoming more plentiful, and that the demand for silver is making it scarce. Now the extent to which this is true in practice must be measured by the rise which has taken place in the market price of silver, which I have shown does not exceed 5 per cent. But supposing it were greater, would that be a reason for using gold? If India requires a supply of the precious metals, it can only be obtained in exchange for its products in foreign markets, and the quantity of those metals, whether of gold or silver, will be obtained in the exact proportion which they bear to the products of India for which they are exchanged. India is quite as well off to receive silver as gold, and perhaps better, inasmuch as silver seems to be an appreciating metal, while gold is probably still falling. Nor can it be deemed to be a disadvantage to India that the silver remitted for its products has to be obtained in exchange for the gold received from California or Australia in London. These different movements in the distribution of the precious metals to the points at which the exchange of the world direct them, are all determined by general broad principles, which are self-acting and which any artificial attempt to disturb or control can only tend to derange.

27. In whatever form India receives its payments from the exterior world for the balance of its exports over its imports, whether in gold or in silver, can matter not, so long as the full value is received.

28. I know it is said that gold coins are much more convenient for circulation than silver. If this refers to the removal of Government Treasure from one part of the country to another, then I much doubt if any important advantage would attend gold coins. The expense of removing coin is no doubt in a very small degree determined by its weight and bulk, but to a much greater extent by the necessity of protecting it. It would require just as much of an escort to protect the sum of £100,000 in gold, as if in silver, and perhaps even more so, inasmuch as the compactness and lightness of gold would render it a more tempting and handy prize to the robber, than bulky and weighty silver. Again, I doubt much whether there would not be somewhat greater danger to local Treasuries containing gold coin than silver. It is a very suggestive fact that during the mutiny the Gold Mohur of 15 Rupees commanded such a *premium*, owing to their greater convenience for concealment or removal, that the

price of 26 and 27 Rupees was given for them.

29. But if the convenience referred to alludes to the use of gold coins for private expenditure, then I readily admit their value to that extent. But I would submit that, for this purpose, and for all others that have been suggested, a well-regulated paper currency, such as I have described in another Minute of this date, would answer much better, while the ancient single standard of the country in which all existing obligations have been contracted would be maintained in all its integrity.

JAMES WILSON.

GOVERNOR GENERAL'S CAMP, }
Meerut, 25th December 1859. }